



Canadian Federation of Library Associations
Fédération canadienne des associations de bibliothèques

Don't Blame Copyright for Declining Revenue. It Won't Help Authors

Librarians and educators want Canadian students and authors to succeed. Libraries purchase access to content including books, periodicals, and data and pay publishers hundreds of millions of dollars each year to provide students with digital access to these works. Libraries and librarians support education in colleges and universities across Canada and they support authors through their purchases.

That important message is being drowned out by the barrage of accusations from author groups and publisher organizations that libraries are threatening the economic viability of authors. Nothing could be further from the truth.

Those hundreds of millions of dollars in access and subscription fees, paid by libraries, should be going to authors of the licensed works. Copyright is not part of that transaction and tweaking the *Copyright Act* won't change the economic plight of Canadian authors.

The *Copyright Act* primarily protects the rights of authors and other rights holders. Some of these rightsholders are complaining about a sliver of balance which offers limited rights to the users of the works. Long included in legislation, and affirmed by our highest court, that sliver reflects the public interest in copyright – so that people, individuals, students, can make use of a work for a very limited number of purposes, including research, criticism, review, parody, education, and news reporting.

For more than a decade, the education sector and their libraries have been the target of unfounded claims of harming authors' incomes -- despite being among the largest purchasers of Canadian literary works. These attacks center around changes to the *Copyright Act* in 2012, which added the term “education” to the list of allowable purposes for fair dealing. The attackers also oppose the right of post-secondary institutions to manage their copyright obligations without a contractual intermediary that forces students to pay for the right to photocopy course materials they never use and to pay twice for course materials they do.

Columns by Kate Taylor and Hugh Stephens published in *The Globe and Mail* are part of this long and misdirected campaign against educators and their libraries. Taylor described the situation as “legalized robbery” and called the fair dealing rights that Parliament has given its citizens, a “loophole” in the law, echoing the unfounded hyperbole that Access Copyright and many publishers use in their lobbying tactics. Stephens announced that the addition of ‘education’ to fair dealing “opened the door to



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wide-scale unlicensed copying” by educational institutions. This ‘argument’ was solidly refuted by the Supreme Court of Canada, due to the lack of supporting evidence.

A Canadian licensing entity, Access Copyright, sued its own customers in three separate copyright lawsuits, against the Great Library of the Law Society of Upper Canada, the Ministers of Education, and York University. It lost each time. It used the courts to attempt to force libraries and educational institutions to buy a service they do not need or use. The most recent, decade-long case against York University, was intended to force institutions to continue paying millions of dollars a year for photocopy licences. The Parliament review and report, referred to by Stephens, observed, “The decline of collective licensing in education has arguably more to do with technological change than it does with fair dealing.” Access Copyright seems not to have read or understood this. In its recent announcement of layoffs, it blames libraries and the education sector for its woes. Nary a word on technological change.

There has been a digital revolution in the educational publishing sector. Access to most course materials is now digital, not print, and governed by licences negotiated directly with publishers. While some of these electronic books and journal articles are openly licensed (at no cost to the user), most are subject to terms and conditions that provide students and educators with the right to reproduce the content for educational purposes. As such, the fair dealing and reprographic licences are not in demand as they once were.

This isn’t because students and educators are stealing content. The educational right to reproduce most commercially available course materials is paid directly by libraries to publishers or aggregate content providers. Continuing to attack libraries and educators for their lawful use of course materials won’t solve the issue of authors’ income.

Of course, authors should be compensated for educational use via their publishing contracts, but that is a matter negotiated between authors and their publishers. Libraries have no involvement in the author-publisher relationship, and consequently are not to blame for the lack of author compensation.

Libraries are spending more on content than they ever did. Libraries know that authors make money by selling their creative output. How much money they make is a function of market demand and their publishing contracts. Author compensation cannot be regulated through copyright law.



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Instead, those who truly care about author incomes could start by making sure authors are aware of supports like the Public Lending Right Program and the bookseller and publisher-focused Canada Book Fund. They could also turn their attention to regulatory practice in other jurisdictions, which have implemented different approaches to support authors. For example, recent legislative changes in the EU Digital Single Market provide authors with the rights to appropriate and proportionate remuneration, to publisher transparency in reporting of sales, and to revoke or adjust their publishing contracts.

The attacks on libraries and education institutions need to stop. These organizations are focused on ensuring students have reasonable access to the course and research materials best suited for their educational needs. Let them do their job without maligning them. Author organizations need to tackle the real and systemic funding problems their members are facing.

A handwritten signature in black ink that reads 'Lorisia McLeod'. The signature is written in a cursive, flowing style.

Lorisia McLeod
Chair, Canadian Federation of Library Associations