

CANADIAN COPYRIGHT INSTITUTE

Established to promote a better understanding of copyright and to encourage its use in the public interest

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Intervention by the CCI to the Standing Committee on Copyright and Related Rights (SCCR 30) of the World Intellectual Property Organization (WIPO)

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Mr. Chairman, thank you for the opportunity to address this assembly. And let me be among the last to congratulate you on your reelection to the chair. I represent the Canadian Copyright Institute an umbrella group representing creators, publishers, and distributors. At WIPO SCCR 29, I shared some of the experience of Canadian writers and publishers, resulting from exceptions and limitations relating to education. I would like to update some of these comments.

I do this in the spirit moving towards evidence based comments on unintended consequences that came come from exceptions that are too broad.

To summarize briefly, in the fall of 2012 our national copyright law was changed to allow fair dealing for the purpose of education, parody, or satire.

Publishers and writers were pleased to see parody and satire included, but education, as a broad undefined category of fair dealing is another matter.

Canada's educators photocopy or digitally scan hundreds of millions of pages of copyright protected content every year. They use these copies to compile course packs and other teaching tools as part of their curriculum. Under our collective licensing regime, creators and publishers were compensated for the use of this work.

Unfortunately in our opinion, universities, colleges and schools have used the ill defined fair dealing exception to radically reduce compensation to writers, publishers, and other creators.

Specifically, our courts have suggested that "short excerpts" can be used under fair dealing for education. Our educators have defined short excerpts as follows:

10% of a copyright protected work

One complete chapter from a book

A single article from a periodical

An entire poem

These guidelines, I must point out, are not part of Canadian law. They represent, we think, what educators would like the law to be.

Emboldened by publication of their own guidelines, educators have stopped paying for collective licenses through Access Copyright, our collective rights agency.

Over the past several months, the audit firm Price Waterhouse Coopers has been analyzing the impact of these guidelines on the educational publishing market in Canada, including the effect on teachers, professors, students, writers, and publishers.

The study will be released in Canada in the next few weeks. In addition to quantifying the damage to writing and publishing from educators' aggressive interpretation of the changes to the fair dealing exception in Canada, the PWC study concludes that the production of home-grown educational materials will, inevitably, decline.

The intended consequence – wider access to quality educational materials – will be trumped by the unintended consequence – the withdrawal of creators from the educational marketplace.

As the PW study points out, creators must be compensated, or the business model is broken.

I hope that an understanding of the Canadian experience can be useful to SCCR members as discussion of educational exemptions moves forward.

Bill Harnum
Chair, Canadian Copyright Institute

