

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 33) of the World Intellectual Property Organization (WIPO)

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Thank you, Chair, for the opportunity to address this assembly. I represent the Canadian Copyright Institute, an organization of creators in Canada whose mandate is to advocate and educate the public, legislators, and others about copyright law. I have spoken in this chamber before about the damage to Canadian writing and publishing from the unintended consequences of the revisions to our copyright act in 2012.

What I offer now is a cautionary tale about how states need to be careful about extending exceptions and limitations for education.

Briefly, in 2012 revisions to the copyright law in Canada extended fair dealing to “education.” This broad and largely undefined new category, coupled with a Supreme Court decision that suggested that brief excerpts of copyright material used in instruction could be fair dealing, prompted the educational sector in Canada to promulgate its own fair-dealing guidelines. These define fair dealing for education as using up to 10% of a work, an entire chapter from a book, an entire poem, etc.

At the same time, the education sector decided, en masse, to stop paying licensing fees to Access Copyright, Canada’s copyright collective.

The education sector relied on these “fair-dealing guidelines” to justify its decision to stop paying for the content that it had been paying for decades. It is important to note that the guidelines have no basis in law or regulation. They were simply chosen by the education sector to reflect, in my view, what it would like the law to be.

The result has been devastating for publishers and writers. Licensing revenue has plummeted by \$55 million in two years, and payment to authors for content from Access Copyright has declined 80%.

Individual authors and publishers do not have the resources to challenge these arbitrary guidelines through the courts. Fortunately, Access Copyright has been able to mount court challenges to the industrial-scale copying, without compensation that educators have practised. But these court challenges are expensive, and a small organization like Access Copyright will run out of money for these challenges – a problem not faced by universities and schools, which have the backing of the public treasury.

So my message to WIPO states is a simple one. Be very careful about extending limitations and exceptions to education. Be sure they are carefully circumscribed, so that you do not impose the same suffering on your creative sector that has occurred in Canada.

Bill Harnum
Chair, Canadian Copyright Institute

