



December 10, 2018

Standing Committee on Canadian Heritage
Sixth Floor, 131 Queen Street
House of Commons
Ottawa ON K1A 0A6

To: Standing Committee on Canadian Heritage,

I make this submission as President and Vice-Chancellor of the University of British Columbia, the largest university in Western Canada. UBC is a global centre for research and teaching, consistently ranked among the top 20 public universities in the world.

The traditional mandate of a university is to foster research and teaching in all areas of knowledge. To be competitive on an international level, I have adopted a strategic plan for UBC that focuses on **inspiring people, ideas and actions for a better world**.

UBC's purpose is to **pursue excellence in research, learning and engagement to foster global citizenship and advance a sustainable and just society across British Columbia, Canada and the world**. The values at the heart of UBC are **excellence, integrity, respect, academic freedom, and accountability**.

To harness the energies and strengths of an extraordinary institution to effect sustainable and positive change, both locally and globally, I am focusing UBC around three themes that are critical to society today: **Inclusion, Collaboration and Innovation**. I have also established 10 overarching goals, including global leadership in research, scholarship and creative endeavours, transformative teaching, co-developing knowledge with Indigenous communities, increasing global and local connections, and leading in fostering discourse, knowledge exchange and engagement.

How does a university achieve all of these things? By hiring the best people, and attracting the best students while inspiring and empowering them to act by contributing to the innovative, information-sharing ecosystem that has taken shape over the last century. We need people who are creative and productive, and who learn from one another, and create new ideas and knowledge, and, in turn, share that knowledge.

Copyright is an important feature of this ecosystem, by determining who owns and who can use the particular expressions of knowledge, and by delineating the freedom to explore and the power to suppress the dissemination of information, knowledge and culture. Copyright, as an economic right, has the power to create rational and irrational economic behaviour.

UBC wants to empower its faculty and students to become globally relevant knowledge consumers, creators and disseminators. UBC's interest is in powerful incentives to create, but also in equally powerful opportunities to access and learn from others. It is through this balance



that UBC, together with its counterparts across Canada, will continue to be relevant and useful to society as a whole, both nationally and internationally.

You are currently engaged in a review of the remuneration models for artists and creative industries, and will submit a report to the Standing Committee on Industry, Science and Technology (INDU), who is currently engaged in a review of the Copyright Act. I urge you to use this opportunity to help us achieve our strategic mission, and help the educational sector fulfil its promise.

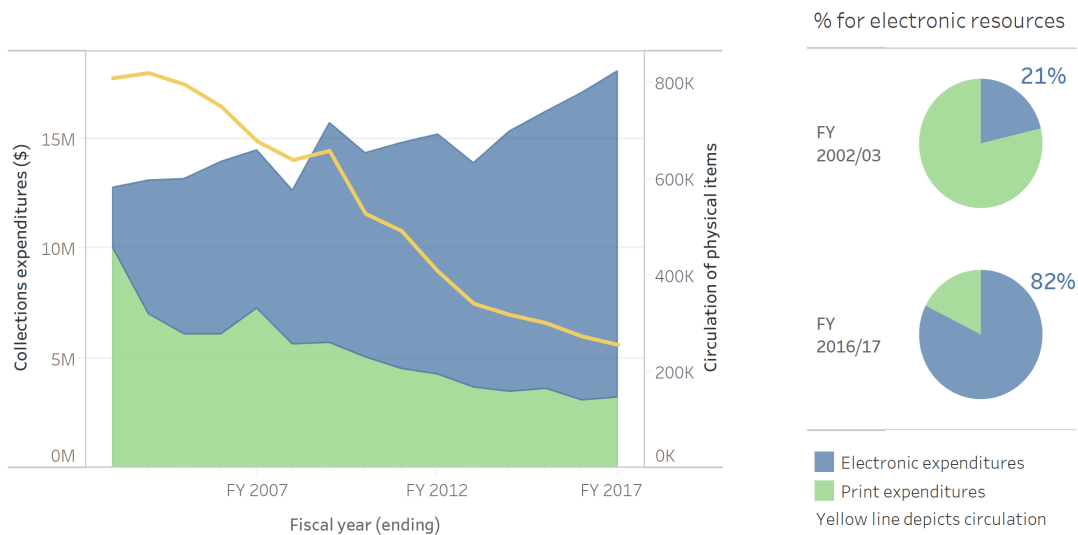
We therefore ask you to consider the following recommendations in your report to INDU:

1. Allow the educational sector to utilize its scarce, taxpayer funds to achieve their core mandate.

This has two elements:

First, allow the educational sector to focus on obtaining the best and most effective materials.

Our faculty and students are telling us that the best and most effective materials for UBC's teaching and research are digital. The UBC Library is responding, as shown in the table below¹.

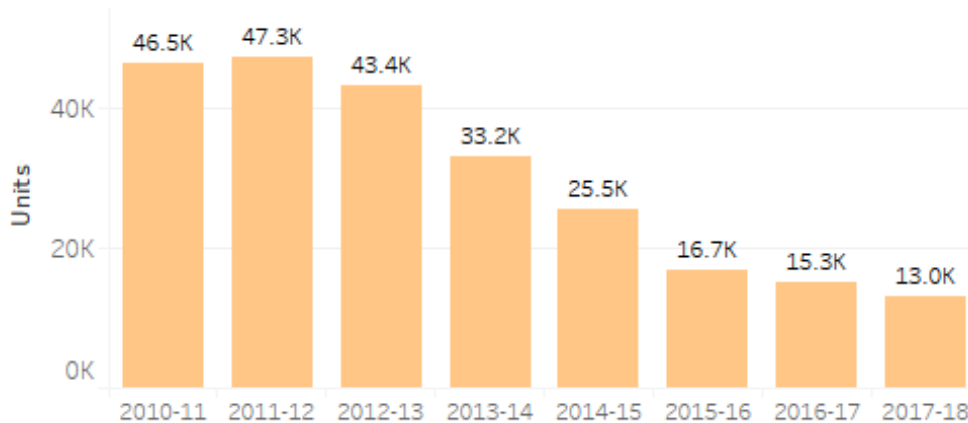


¹ Supplementary data to answer specific questions from the committee will be provided separately. See also Canadian Association of Research Libraries' *A Guide to Canadian Research Libraries' Spending on Content* (July 2018)



Correspondingly, circulation and copying from paper books is becoming less and less common, as shown in the table below.

Bookstore custom course pack sales by fiscal year - units



Copying from paper materials will likely continue in some small way in areas such as Fine Arts and due to the preferences of individual faculty members. As is evident, paper-based copying and course pack production is ceasing to be an institution-wide practice. Instead, UBC is moving to more advanced, forward-looking digital, online and multi-media teaching technologies. As such, a compensation scheme for paper copying based on an institution-wide per-student license or tariff rate is no longer appropriate.

I therefore request that Parliament avoid measures that would, in effect, require the educational sector participate in a compensation scheme that draws tens of millions of dollars annually away from education and research, and toward increasingly outmoded sources of content (i.e., copying from paper-based materials) and in a manner that bears no relation to actual use. In particular, I request that Parliament not structure a statutory damages regime that is so extreme in effect that it all but requires the educational sector to sign on to licenses or tariffs without regard to the amount of actual content being copied or the amount a university pays to rights holders through direct licensing.

Second, I request that Parliament find direct and effective ways to support Canadian cultural industries. Our institution supports Canadian cultural industries in various ways, including research and teaching, and millions in purchases of books for our library collections, and sales from our Bookstore. Our support is given rationally, in service of our mandate to achieve the best results in research and teaching. I request that copyright law not be used to drive purchasing behaviour (i.e. to paper-based copyright collectives), as an indirect subsidy to a subset of authors whose works are virtually unrepresented in the repertoire of works that are of current interest to universities. Not only will this be ineffective to reverse the world-wide trends that have led to the unfortunate devaluing of content production, it will be ineffective due to the fact that the educational sector is copying from physical books, newspapers and journals less and less, as it relies on directly licensed digital content more and more—therefore, the effectiveness of such an indirect subsidy will continually decrease over time.



2. Maintain robust fair dealing rights. These rights benefit all authors, and all readers.

Fair dealing facilitates the exchange of ideas in education, research, criticism and review; it facilitates the free press, and free and open elections. It is also a right that we rely upon to entertain us with parody and satire.

We caution against drawing a close connection between the expansion of fair dealing in 2012 to include education and the plight of Canadian authors. This is for two reasons – the digital shift, and the rationalization of spending on educational content.

First, clearly, the world is experiencing an ever-accelerating shift toward digital content and there has been an unfortunate devaluation of original content (whether written, musical or otherwise). This is evident in the submissions made to INDU and this Committee by others.

Second, as touched on above, many in the education sector, including UBC, conducted a careful analysis of their spending on educational content, and realized that their content acquisition practices were not economically rational. They therefore chose to opt out of the Access Copyright proposed tariff. Importantly, this decision was made before the expansion of fair dealing to include education and before the *Access Copyright v. Alberta* decision confirmed that fair dealing for private study permits copying by teachers for materials to be distributed in class.

This underlying rationale continues, even if Parliament restricts educational fair dealing. In other words, should fair dealing for educational purposes be eliminated or restricted, the educational sector is unlikely to seek to operate under a blanket Access Copyright tariff. Therefore, restrictions on fair dealing will only serve to negatively impact all authors and readers, and by extension, the education sector. Overall, restrictions on fair dealing will produce little gain for authors, and cost everyone dearly.

3. Respect Academic Freedom.

At the heart of a university is the recognition that faculty members must be free to research and follow their research wherever it may go, without interference from administrators and government, and to disseminate the knowledge they've gained, through publications, participation in public life, and through teaching.

Put a different way, universities, as legal entities, exist to facilitate and actuate their faculty members and students. They provide physical infrastructure and the intellectual space necessary for research and teaching to flourish. But universities do not tell their faculty what to research, and beyond setting the curriculum and criteria for programs and courses, they do not ultimately tell their faculties what to teach; those are academic matters decided by the academy. This division of responsibility is encoded in the DNA of many universities where academic matters are decided by a senate, which is autonomous on academic matters, and non-academic business and financial matters are decided by a board of governors.

A key element of academic freedom is the freedom from administrative interference in research and teaching—and every university must proactively guard against infringing that



freedom. One element of this freedom involves the freedom from surveillance of teaching and research activity, lest that surveillance itself become a mechanism for interference or control, stifle free expression and inquiry, or lead to efforts to exert inappropriate control.

As a result, university administrations are loathe to undertake activities, except as absolutely necessary, that entail surveillance or restrictions on research and teaching. I therefore ask Parliament not to impose any requirements or pre-requisites on the exercise of fair dealing that would encroach upon academic freedom, and thereby make it all but impossible for the university and its faculty and students from exercising their fair dealing rights.

4. Support the Public Domain.

The public domain refers to works that are no longer subject to copyright, whether that's because copyright has expired, or copyright has been waived.

Supporting the public domain has two elements:

First, maintaining the current term of copyright, which is the life of the author, plus 50 years after the year of the author's death. Consider that for a work published by a 40 year old author who lives until the age of 90 (and dies on January 1), the work will be protected for the life of the author (50 years), the balance of the year in which the author died, plus another 50 years. All in, 101 years.

That is, in our view, sufficient to ensure that the author and their heirs receive the full value for their work. Note, in the world of patents, the term is 20 years.

Second, enabling the dissemination of 'orphan works'. Orphan works are works that are, or are suspected to be, protected by copyright, but where the author is unknown, or the author is not locatable.

University archives are replete with materials that call out for dissemination, and which would greatly enrich Canadian culture, as well as academic pursuits. However, concerns about fairness and liability for copyright infringement render university archives and their patrons unable or unwilling to disseminate such works.

I therefore request that Parliament work with the relevant stakeholders to develop a regime whereby orphan works may be unlocked, accessed and utilized to enrich our historical, literary, cultural, social and scholarly endeavors.

Sincerely,

A handwritten signature in black ink, appearing to read 'Santa J. Ono'.

Santa J. Ono
President and Vice-Chancellor