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## Legislative Committee on Bill C-32

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EVIDENCE

**Monday, December 13, 2010**

—  
**Chair**

**Mr. Gordon Brown**



## Legislative Committee on Bill C-32

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• (1530)

[English]

**The Chair (Mr. Gordon Brown (Leeds—Grenville, CPC)):** Good afternoon, everyone.

We will call to order this eighth meeting of the special legislative committee on Bill C-32.

We have one hour to hear from our witnesses today, and we have two groups of witnesses: as an individual, Douglas Arthur Brown; and from the Canadian Teachers' Federation, Mary-Lou Donnelly and John Staple.

For five minutes, Mr. Brown, you have the floor.

**Mr. Douglas Arthur Brown (As an Individual):** Thank you for this opportunity to testify before you today.

I am a full-time professional writer from Cape Breton, Nova Scotia.

In Canada, creators of intellectual property number over 140,000. A quarter of us live in rural or small communities—about 36,000, the same number of artists who live in Toronto and Montreal combined. In all, Canada's \$46-billion arts and cultural industry employs more than 600,000 Canadians.

A professional book writer usually earns about 10% of the cover price of a book. The remaining 90% is disbursed to others who work in the book publishing industry. Most professional writers in Canada earn less than \$20,000 annually from their writing.

I am here before you today to put a face behind some of these statistics.

Some of my income is derived from royalties on book sales, but as time passes, interest in a published work diminishes. Writers also depend upon book launches, festival readings, and school workshops. However, that market is rapidly diminishing. A school board in the district where I live has been asked to cut back 22% of their budget. The first cuts will be music and arts teachers, and of course visiting writers.

Writers can and do apply for Canada Council grants and other grants, but demand always outweighs availability. As writers usually spend between two to four years working on a new book, these grants, if awarded, only go so far.

I also depend upon revenue from Access Copyright, a collective agency that issues licences to authorize the copying of my copyright material. About 85% of Access Copyright's current revenues, what it collects from educational institutions, is at risk if fair dealing for

education is incorporated into Bill C-32. So I stand to lose up to 85% of my income from Access Copyright.

Former industry minister John Manley told you last week to have a look at the new education provisions “in five years' time, to see if some of these extreme expectations...have come true, but in the meantime come down, in balance, on the side of education”.

Actually, in the meantime, teachers across Canada will be encouraged by this new fair dealing exception to freely copy big chunks from a book of mine, maybe even a chapter or more, for an entire class without paying Access Copyright—and, through them, me. The collective that represents me and other artists will be forced to cut back drastically and will be less able to represent us effectively. More copying will hurt book sales, as well. With all due respect to Mr. Manley, five years is too long for us to wait while we're being decimated.

In ten years I've had five books published, and for six of those years I've published a literary magazine. The more than a quarter-million dollars of revenue generated by these publications generated tax dollars and infused money into the local community of Cape Breton, benefiting publishers, printers, designers, graphic artists, illustrators, distributors, writers, advertisers, photographers, and booksellers. At a time when rural communities across Canada are experiencing out-migration, my cultural and entrepreneurial contribution has been positive for the economy. And I am only one creator.

Fair dealing for education is not defined in this bill. As other witnesses have mentioned, a Supreme Court ruling lays out a six-part framework for deciding what might be fair. The courts are entitled to consider other factors as well, but the question is to be decided on a case-by-case basis, and protection of an author's financial interest in the work he has created is not a priority in that framework. No one at this point really knows what fair dealing for the purpose of education really means—except more copying without compensation to creators, and more costly lawsuits.

An advantage of living rurally is that one gets to know many of the people who operate local businesses. Several years ago, a local photocopying shop called me because an educator had arrived at the store and wanted to photocopy 100 copies of a children's book that I had written. When told that she couldn't copy the entire book or make so many copies without being in violation of copyright, her response was, “I'll never read another thing he writes. Who does he think he is—Harry Potter?”

Now, what disturbs me is not that the teacher in question didn't realize that Harry Potter was a fictional character, but that she assumed that stealing from me would not matter. Adding education to fair use is an invitation to much more abuse and to protracted legal battles. The practical outcome will be far more copying by teachers, and fewer publishers and writers producing much less material for Canadian readers and Canadian schools. You'll be making my life's work much more difficult to sustain. Please drop the fair dealing exception for education.

• (1535)

Thank you. *Merci*.

**The Chair:** Thank you very much.

We'll move now to Ms. Donnelly from the Canadian Teachers' Federation.

**Ms. Mary-Lou Donnelly (President, Canadian Teachers' Federation):** Thank you very much.

I certainly appreciate the opportunity to appear before this committee. I have with me today my colleague John Staple, who is the deputy general secretary of the Canadian Teachers' Federation. Together he and I will be addressing the questions, hopefully.

The federation is the national voice for teachers in Canada on education and related social issues. We represent upwards of 200,000 teachers through 16 provincial and territorial teacher organizations across the country.

Our brief to the committee we hope puts the views of Canadian teachers on elements of Bill C-32 clearly in perspective. As indicated in the introduction section, we have struggled with issues related to the balance that we believe needs to be struck between the rights of creators and the need of access by students and teachers to educational material.

Our own policy reflects the fact that we have been attempting to address that balance. We've been following attempts to amend the Copyright Act for many years. We and our partners in Canada's education community have been consistent in our approach on what is important for education over that time.

CTF supports Bill C-32 because it is a fair and balanced approach for education. Two key sections are of great importance to us. They are the education or Internet amendments, depending on your choice of words, which is proposed section 30.04, and the addition of education to the list of purposes for which fair dealing is available, proposed section 29.

The Internet amendment is important because the current copyright law is not clear about the extent to which teachers, students, and other educational users can legally engage in routine classroom activities such as downloading, saving, or sharing text, images, or videos that are publicly available on the Internet.

The amendment contained in proposed section 30.04 deals only with publicly available material. That is material posted on the Internet by the copyright owner without password protection or other technical restrictions on access or use. Most of this material is posted with the intention that it be copied and shared by members of the public. It is publicly available for anyone who wants to use it.

The problem is that current copyright law may not protect schools, teachers, and students when they are making routine educational uses of this publicly available material. Educational institutions and the teachers, students, and staff who work in them use the Internet in unique ways that may infringe copyright, even though many individual uses of the same material might be allowed under the Copyright Act.

Examples of the kind of educational use that is surrounded by legal uncertainty include making multiple copies of a work such as a photograph or an article found on the Internet for all students in a class; playing an online video for students in a classroom; and posting an item from the Internet on a class website. We welcome and support proposed section 30.04, and know that it will provide legal clarity about the use of publicly available Internet material for educational purposes.

The notion of adding additional purposes to the fair dealing provision has been discussed in the copyright reform process as a balanced method of providing access to works without harming copyright owners, because the dealing must meet a fairness test for the provision to apply. CTF supports the amendment to add education to the list, but believes, at the same time, that it does not go far enough. That is why our brief indicates strong support for the passage of the amendment adding education to the list of fair dealing purposes, and suggests a further amendment clarifying that making multiple copies for a class of students is fair dealing.

Two other issues referenced in our brief impact on the access to learning materials. They are the requirements to destroy course material 30 days after final examinations and the amendments respecting technological measures. We would support an amendment that deletes the requirement to destroy online course material 30 days after the final course evaluations, and we would support an amendment to proposed section 41 that would permit users to circumvent technological protection measures in situations where the use of the material would not be an infringement of copyright.

Thank you. We look forward to your questions.

• (1540)

**The Chair:** Thank you very much.

We will go to the first round of questions.

From the Liberal Party, for seven minutes, Mr. Rodriguez.

[*Translation*]

**Mr. Pablo Rodriguez (Honoré-Mercier, Lib.):** Thank you, Chair.

Good afternoon and welcome.

Ms. Donnelly, did you say that one should be able to make several copies of books for a class? Is that what you said?

[*English*]

**Ms. Mary-Lou Donnelly:** In terms of copyright of multiple copies for a class, yes, we would like clarification on that in the act.

**Mr. Pablo Rodriguez:** Okay. What do you mean by "clarification"?

**Ms. Mary-Lou Donnelly:** Currently, as it stands—

**Mr. Pablo Rodriguez:** I think you want amendments.

**Ms. Mary-Lou Donnelly:** Yes. We would like a further amendment to that.

**Mr. Pablo Rodriguez:** So that you can have multiple copies?

**Ms. Mary-Lou Donnelly:** So that we can make multiple copies—of an article off the Internet, for example—for a class.

John, do you want to add something further?

**Mr. John Staple (Deputy Secretary General, Canadian Teachers' Federation):** Sure.

The courts have established in a recent case that “multiple copies” is not fair dealing. We are suggesting that if education is to be added to the list for fair dealing, then it would make sense to clarify that issue about whether or not multiple copies is in fact fair dealing within the legislation.

To go back to what you said, we're not suggesting we'd make multiple copies of books. Teachers are not in the habit of copying books, full works; they're more in the habit of copying small extracts, one or two pages, two to three pages of works, but not copying full texts. That would not be fair dealing.

[Translation]

**Mr. Pablo Rodriguez:** Fine.

Mr. Brown is concerned that he and his colleagues will lose income. Are you concerned about that? Do you think he has no need for concern and that including education as an exception will have no impact in terms of income loss?

[English]

Should he be worried?

**Mr. John Staple:** We're concerned about his income as well. That's one of the dilemmas we have in attempting to find a balance between what we think is right for the creators and what we think is necessary for education and the access of students and teachers to material. So we have that concern as well.

I think sometimes when we're talking about fair dealing and we're talking about photocopying and we're talking about making copies of work from texts or from other works, printed or not, we tend to get a little confused about the game that's at play.

Mr. Brown referenced Access Copyright and the photocopying arrangement between school boards and ministries of education and that group. What happens within that is there's a set rate for students to pay, or school boards or ministries to pay on behalf of students, for the amount of copying that is done within the amount set by Copyright Canada. There was a study done in 2005-06 by Access Copyright to determine the amount of copying that teachers do in schools. It was for the purpose of helping Copyright Canada make the decision—

[Translation]

**Mr. Pablo Rodriguez:** Could you wrap up your answer quickly please?

• (1545)

[English]

**Mr. John Staple:** Okay. I'll try to be very quick.

The study found that teachers, on average, copy 60 pages per student per year. It's difficult to copy a text with just that many pages.

[Translation]

**Mr. Pablo Rodriguez:** Fine.

[English]

**Ms. Mary-Lou Donnelly:** Can I just add to that?

**Mr. Pablo Rodriguez:** No, sorry, I don't have much time.

[Translation]

When I was a young boy in grade school, and even in high school, we all had books. We borrowed them and we had to cover them, take care of them, and hand them in at the end of the year. Is that still the case? Is there still one book per student for various subject matters?

**Ms. Mary-Lou Donnelly:** It depends on the course.

[English]

For example, some courses may have textbooks involved, but more and more teachers do get away from textbooks, depending on their course. One, the information is changing so rapidly, and two, book budgets in school boards have declined very much so because we have access to other information—the Internet, of course, being one of them, and all kinds of different access to information. Fewer courses will have textbooks associated with them because of that rapid change in education, in knowledge.

[Translation]

**Mr. Pablo Rodriguez:** Then it's only logical to assume that the creators, the individuals who write these books for the schools, suffer losses of income. Are you not concerned that this will further jeopardize their situation, that this will lead to a loss in their income?

[English]

**Ms. Mary-Lou Donnelly:** No, not at all; we support the right for creators to have the income and to be compensated fairly. Absolutely we support that.

We do not support copying entire works at all. I'm actually quite surprised by the example that Mr. Brown gave. Although I'm sure things like that may have happened, it would be very unusual for a teacher to copy an entire book for an entire class. Quite frankly, the copying budget would just not be there for an individual teacher to have that.

**Mr. Pablo Rodriguez:** Okay, thank you.

[Translation]

I'll wrap up with you, Mr. Brown. You gave us a very concrete example. Personally what concerns me—and you will see this through my questions—is that this opening, this exception for education, will leave the impression that one may copy just about anything for almost nothing.

I'm sure you have discussed this with your colleagues and with individuals from your sector. What do you and your colleagues think the actual impact of including education in...?

[English]

**Mr. Douglas Arthur Brown:** I'm not getting that in English.

**Mr. Pablo Rodriguez:** You're not getting it in English?

**Mr. Douglas Arthur Brown:** No.

**The Chair:** Go ahead and change the channel.

**Mr. Pablo Rodriguez:** Does this mean I get another four minutes, Mr. Chair?

**The Chair:** No.

**Mr. Pablo Rodriguez:** Three minutes?

**The Chair:** You can do this question again, Mr. Rodriguez.

[Translation]

**Mr. Pablo Rodriguez:** What I was saying was that the people on this side of the table share the concern that the income of creators, those who are doing the writing, will go down if education is included as an exception, because this could be a very broad exemption. We don't know what the scope of the term "education" will be nor what the impact of including it in the legislation will be. We don't know how that will be interpreted in terms of fair dealing.

What does your sector think?

[English]

**Mr. Douglas Arthur Brown:** Well, my sector—writers—of course are very concerned about this. We hear a lot about balance between creators and users, but when a writer stands to lose their income for their work, there is no balance there. Balance is when you are paid for your intellectual property.

As I've mentioned, you could potentially lose up to 85% if these exemptions go through. And because it's going to be on a case-to-case basis, we don't know what that means, fair dealing.

It's a very precarious situation for us and publishers to be in. If publishers get afraid about losing income, we lose, as writers.

• (1550)

**The Chair:** Thank you very much.

*Madame Lavallée, sept minutes.*

[Translation]

**Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ):** Thank you very much.

My question is for the Canadian Teachers' Federation. Why do you no longer want to pay copyright fees to the content creators?

[English]

**Mr. John Staple:** I don't think we've ever suggested that we don't want to pay copyright. We've never suggested that.

What we are trying to do is to ensure that there's access to material by teachers and students. We don't want to reduce Mr. Brown's income. The fee-setting process for photocopying of material in schools is done by a completely different process. At the moment it amounts to about \$20 million for creators in the country through the fees set by Copyright Canada. And if that copying goes up, the next time they sit down to set the fee, then the fee will go up, and Mr. Brown and other people will get a greater amount per student for the amount of copying that's done.

[Translation]

**Mrs. Carole Lavallée:** I apologize for interrupting you but wasn't the fee already set at \$5.16 per student?

[English]

**Mr. John Staple:** Yes, it's \$5.16.

[Translation]

**Mrs. Carole Lavallée:** Why do you not want to pay that?

[English]

**Mr. John Staple:** We are paying that.

[Translation]

**Mrs. Carole Lavallée:** If Bill C-32 is passed, will you continue to pay it?

[English]

**Ms. Mary-Lou Donnelly:** Yes.

[Translation]

**Mrs. Carole Lavallée:** You are asking to continue to pay copyright fees?

[English]

**Ms. Mary-Lou Donnelly:** We would continue to pay that.

[Translation]

**Mrs. Carole Lavallée:** In that case, why do you appear to be supporting the exception? I arrived a little late but from what I understood you wanted to be exempted from paying copyright fees.

[English]

**Ms. Mary-Lou Donnelly:** No.

Go ahead, John.

**Mr. John Staple:** We're not looking for exemptions to paying copyright. If something is copyrighted and a creator wants to be paid for it, and if teachers want to use that material, it should be paid for—no question, no misunderstanding about that at all.

What we are looking for is clarity in the act that ensures that when teachers do certain things that they need to do in order to provide material for the classes, they're not breaking the copyright law. That's what we want to ensure: clarity in the law, in the act, so that there is opportunity for teachers to access material and students to access material without breaking the law.

But paying for it—the process for paying for photocopying and using copyright in Canada—will continue. And it's likely that under this process the amount of copying may increase. As I said, at the moment it's—

[Translation]

**Mrs. Carole Lavallée:** So you do want to pay for the photocopies you make. You do a lot of photocopies, you do them in Canada at all school levels, at a cost of \$516 million if my memory serves me well.

[English]

**Mr. John Staple:** The study done in 2005-06 was a study of schools to see how much photocopying was actually done by teachers, for the purpose of setting the fee for Copyright Canada. The study was done by Access Copyright.

The study showed that teachers, on average, made 60 copies per year, per student—that's all, 60 copies—and that the teachers copied small sections of work.

That's what the study showed—

[*Translation*]

**Mrs. Carole Lavallée:** I don't understand.

[*English*]

**Mr. John Staple:** —and I don't see that changing.

[*Translation*]

**Mrs. Carole Lavallée:** You're still requesting that the legislation be changed to include education under Bill C-32. Earlier I heard you refer to Internet documents for example. Copyright fees apply to Internet documents as well. You know, we have to teach youth that authors have rights and that intellectual property, whether it be in the shape of a written paper, a photocopy, or an Internet document or a projection on the wall, is subject to copyright fees. Intellectual property belongs to the content creator and it has to be respected and paid for.

[*English*]

**Mr. John Staple:** Precisely. One of the things we're hoping to be able to do out of this is to engender a greater respect for copyright with students, and to indicate clearly what it means to them.

What we're asking for in the Internet exemption is access to material that has been posted on the web that's already publicly available, that's freely available. We're asking to be able to use that freely in our work with students. But the copyright legislation makes it impossible for teachers and students to do that in certain ways without violating the act. We're saying let's make it clear how people can use this stuff without violating the act.

•(1555)

[*Translation*]

**Mrs. Carole Lavallée:** Yes, however there are already websites that indicate that their documents can be used. Are you not satisfied with that? Under Bill C-32, even the logo, that famous copyright C, will not be respected. It seems to me that if one respects copyright, then one must even respect that when the document in question is on the Internet, students should be directed to websites that contain documents that can be copied. They must not be taught that just because a document is on the Internet it's free and that intellectual property doesn't belong to anyone.

[*English*]

**Mr. John Staple:** No, I agree, and I understand that, but the use of the publicly available material is restricted by the act itself. There are certain uses of the material that teachers want to make that are violations of the Copyright Act, even though the stuff is freely and publicly available. That's what we want to have clarified.

If something is copyrighted and placed on a website, and there is instruction there that if you want this you need to pay for it, then we pay for it if we want it, and so do students. It's as simple as that.

[*Translation*]

**Mrs. Carole Lavallée:** Mr. Brown, I would like to hear your comments on the fact that if Bill C-32 were adopted as it stands, you would suffer an 85% loss in your income from Access Copyright.

[*English*]

**Mr. Douglas Arthur Brown:** Potentially it's up to 85%, but let's put that into real dollars.

As an individual creator, the average amount a writer got from Access Copyright this year was \$350. That may not sound like a lot of money, but it's a lot of money for me. If you take away 85% of that, you're left with, what, \$60? It's a big cut into my income.

Aside from that, over the past decade or so I've been invited by educators and by schools to come in and do workshops and to do reading. Obviously they think my work is good; I've probably taught 25,000 students. And I have arrived in classrooms where, in advance of going into the classroom, my book has been photocopied for every child in the room.

So with all due respect, it does happen.

[*Translation*]

**Mrs. Carole Lavallée:** Was your book photocopied in its entirety?

[*English*]

**Mr. Douglas Arthur Brown:** Yes.

[*Translation*]

**Mrs. Carole Lavallée:** The woman beside you stated that that never happens.

**Ms. Mary-Lou Donnelly:** No, I never said that it never happens.

**Mrs. Carole Lavallée:** Fine.

[*English*]

**The Chair:** That's going to have to be it, Madame Lavallée.

We'll move to Mr. Angus for seven minutes.

**Mr. Charlie Angus (Timmins—James Bay, NDP):** Thank you.

It's great to have the two points of view here, because the issue of fair dealing is one that I think we're trying to certainly define.

Fair dealing was defined by the Supreme Court, in the CCH decision, that based it on six steps that had to be met. The Copyright Board adjudicated their last tariff based on CCH and arrived at a fee that was to be paid. Now the ministers of education have challenged that all the way to the Supreme Court.

Do you support that challenge to the fair dealing tariff that was put in place by the Copyright Board?

**Mr. John Staple:** I think what the school boards are challenging is the element that does not allow teachers to make multiple copies for class. I think that's what they're challenging. We're not a part of that process.

What we're saying here is that it makes sense to us; it makes sense in the teaching situation to have a copy per child. So if you're going to make education part of fair dealing, then understand the reality of the classroom and extend the fair dealing provision to the act of making multiple copies per student.

I'm not talking about making multiple copies of a full text per student. That's not fair. That's free, and fair dealing doesn't mean free dealing. If you need textbooks, you pay for them. You should not copy textbooks. That's not fair dealing.

That said, if I want a page from a textbook and that's classified as fair dealing, then the act should give me the leeway to say that I can copy 20 or 30 copies for students without asking them individually to go copy it themselves, which would be probably classified as okay.

**Mr. Charlie Angus:** I was wanting to clarify whether or not the tariff they chose was fair, because this is something that we....

As legislators, we can create a law, but we don't have the expertise to adjudicate what is copied in the classroom or what is considered copyright. That is the purview of the Copyright Board. It's being challenged at the Supreme Court.

So is it a question of the right to make one copy per child, or is it the tariff that they assessed based on the fair dealing provisions of the Supreme Court decision that you think is unfair?

•(1600)

**Mr. John Staple:** My understanding is that they're not challenging the tariff itself. I think they're challenging the process of making multiple copies. That's my understanding. The tariff is set by the Copyright Board and on the basis of the information that it has available to it. There will always be a battle about that—

**Mr. Charlie Angus:** Yes. I mean, that's how copyright works. Our job is to sort of lay out the ground rules and then let your various organizations fight it out and arrive at a decision.

Mr. Brown, have you looked at the tariff that was decided by the Copyright Board? I'm trying to get at where this 85% drop in royalties is going to come from if the Copyright Board has identified—

**Mr. Douglas Arthur Brown:** Well, that's what Access Copyright itself estimates, that potentially they could lose up to 85%. They gather 85% of their revenues—a lot of money—from educational services. The rest comes from government, etc.

**Mr. Charlie Angus:** I'm just thinking in terms of the fact that the Copyright Board had assessed schools based on the fair dealing provisions. Do you have a sense of how much of your work would be taken out and then allowed...that you wouldn't be compensated for?

**Mr. Douglas Arthur Brown:** It's difficult to answer that.

Again, I'm listening to “one copy for each student”, and I'm just trying to put my head around that. I'm thinking that if there's a class of 35 students, each of them gets a copy of my book, and only one book is being paid for, I'm losing a lot of income.

**Mr. Charlie Angus:** But you're saying “book”. They're saying....

**Mr. Douglas Arthur Brown:** Well, yes, but when you're talking about children's books, for example, if the book is only 20 or 24 pages, you can't give an elementary child two or three pages. What often happens is that the entire work is copied.

**Mr. Charlie Angus:** What if the language said, for example, “no books”? It would be pretty useless for me to be in class and have to share an article with three kids. But a book is obviously a book, even

if it's a children's book. Would it clarify that if we said we're not copying books? It would be pretty useless to have a provision for articles if you can't actually have every kid read the article.

**Mr. Douglas Arthur Brown:** I can't speak to the articles, I can only speak to the books, because that's the business I'm in.

It's also important to remember here that when I say that “we” potentially could lose 85% of our income—with the amendments, if they go through—from the educational standpoint it amounts to about a 1% saving in their budgets. Again, I go back to balance: it's not balance when a creator's material is given away free.

**Mr. Charlie Angus:** I'm interested in proposed section 30.04 on the use of Internet materials. I've published a number of books, and I get paid by Access Copyright for some articles that were in textbooks. When I was in school, we only had textbooks, because how else would you get articles? But now a great deal of material is coming in from students. They're doing their own research. They're not photocopying, they're taking stuff off the Internet; they're just cutting and pasting and putting it right into Word. That's being used in the classroom.

I ran a magazine for seven years. We posted all our articles online for free, because to us it was loss leader. We sold subscriptions and people used it. We always used to get calls from teachers saying, “Can we use this in the classroom?”, and we'd say, “Yes, sure, go ahead”. I didn't know that we were on the cutting edge of a copyright debate. It was just business.

So now we're dealing with what used to be a closed market. We now have a very open market, where all materials are coming in. Wherever you look on the Internet, there's as much product for free as what people used to pay for.

Would you support the use of Internet materials if we maintained collective licensing in place?

**Mr. Douglas Arthur Brown:** Again, that's a difficult question.

Can you just repeat...in terms of Internet use?

**Mr. Charlie Angus:** Right now, if any teacher tells their students to go on the Internet and do a search, they're going to find 10,000 articles, whereas we used to have to go to library and photocopy one article.

**Mr. Douglas Arthur Brown:** Yes, but you're not going to find my work.

**Mr. Charlie Angus:** No, not your book; I'm saying in general, for the education rights.

For example, I ran a magazine, and we posted 15 articles a month for free. We got calls from teachers saying, “We love this article and we want to use it in our history class. Can we use it?”

•(1605)

**Mr. Douglas Arthur Brown:** The articles that were posted, who wrote the articles? Were they paid?

**Mr. Charlie Angus:** Yes, we paid first-time use. All of our writers agreed to have it on the website.



**Mr. Douglas Arthur Brown:** Again, I can't speak to articles and I can't be asked to define what "education" is or what it isn't. I can only speak to books and the fact that, as it currently stands in terms of fair use for education, it is not balance: it is about stealing money from creators.

**The Chair:** That's going to have to be it, Mr. Angus.

We're going to move to Mr. Del Mastro for seven minutes.

**Mr. Dean Del Mastro (Peterborough, CPC):** Thank you, Mr. Chairman.

I really feel it's necessary to try to correct the record a bit here. There's been a lot of questionable information provided here that I think is creating some confusion around the table.

I'm going to go first to the Teachers' Federation briefing here. First of all, it says:

The current Canadian Copyright Act states that it is not an infringement of copyright to "deal fairly" with a work that is protected by copyright for five listed purposes: research, private study, criticism, review, or news reporting. Adding education to this list seems a natural fit.

Whether or not any particular use for education purposes is considered fair will require

—this is important—

an assessment using the six factors determined by the Supreme Court of Canada: the purpose of the dealing; the character; the amount; alternatives to the dealing; the nature of the work, and; the effect of the use on the work. In applying these factors, the Federal Court of Appeal has found that a teacher making copies for a class of students is not fair.

It seems, Mr. Brown, you're of the impression that the court ruling doesn't matter, that the inclusion of fair dealing for education means the fact that the Supreme Court has said that making copies is not fair isn't relevant.

Is that my understanding of what you're saying?

**Mr. Douglas Arthur Brown:** The courts can also consider other factors, as I mentioned in my presentation; you know, it's a little ambiguous there.

**Mr. Dean Del Mastro:** First of all, I think we have to have an understanding at the committee, and certainly....

I understand that there may be some things posted on Wednesday that people may wish to consider about what fair dealing actually means—I'd encourage members to do some digging and understand what fair dealing really means—but now I have a question for Ms. Donnelly or Mr. Staple.

If the Supreme Court has indicated that copying for an entire classroom is not fair dealing, then does this bill threaten to wipe out the collective, the fees that the school boards are paying for copying right now? Are we going to see 85% of the revenues wiped out by this bill, in your opinion?

**Mr. John Staple:** No, I don't think so.

**Mr. Dean Del Mastro:** No, I don't think so either.

**Mr. John Staple:** That process will continue.

From a general perspective, I can understand Mr. Brown's situation. This is the kind of thing that we struggle with as a teacher

organization. I don't want to leave the impression that teachers are stealing from creators, because they are not doing that.

The fact that there has been a decline in textbook sales in this country is not because teachers are photocopying textbooks. It's because school boards and ministries have a finite set of resources for education, and they're trying to make it go as far as possible.

Instead of everybody getting a textbook, class books are bought, class sets, and everybody shares them. They pass them on to somebody else. That has reduced the number of textbooks purchased. The quality of textbooks is higher. They last longer because they're a standard set. There is a greater reliance on electronic information and digital information. There's a whole host of reasons why the textbook sales are slower, probably, over the last 20 years.

That said, maybe the number of texts is down, but the amount of money spent is still the same. It's increasing, as a matter of fact.

There's only so much of that pie. There are billions of dollars spent on instructional materials, books included, every year at the university level and at the K-to-12 level.

**Mr. Dean Del Mastro:** Okay, thank you.

Do you see anything changing, moving forward? Can you imagine a time, moving forward, upon the passage of Bill C-32, with education as an included item under fair dealing, when school boards would encourage teachers to make copies of entire works and assume that this would be fair dealing?

• (1610)

**Ms. Mary-Lou Donnelly:** No, absolutely not. I can certainly speak from 30 years of experience in schools that it was never encouraged to copy an entire work, a whole book. As I said before, you wouldn't have the copy budget—the Xerox budget, as we used to call it—in the school. You wouldn't have the time to do it, either.

I can give you an example of how this would be used. Let's say a teacher has one copy of a children's book. Usually you would not have a whole class set of the same children's book; you would have a multiple array of books in the classroom for the children to read at different levels and such. So if the teacher was reading one of those books to the class, which very much still occurs in school, the teacher would, for example, read the book, show the nice, pretty pictures that go along with the book, and maybe copy one page out of that book and say, "Now we're going to work with this passage, and I want you to draw what you see here", or something along that line.

Certainly I can absolutely understand where Mr. Brown is coming from. We are in no way encouraging teachers to copy entire books.

**Mr. Dean Del Mastro:** I would be outraged by that as well. If it were my book, I'd be outraged by it.

**Ms. Mary-Lou Donnelly:** Absolutely.

**Mr. Dean Del Mastro:** It's against the law now and it will be against the law once Bill C-32 is passed. I just want to make that clear.

I want to move on to some of the exciting things that I think Bill C-32 will do. I see Bill C-32 as allowing education to really roll into the classroom some of the latest technology. Can you talk a little about how teachers are using electronic boards and so forth, and how this can be brought in to really bring the educational experience for our students up to date?

**Ms. Mary-Lou Donnelly:** There's so much information out there on the Internet. Indeed, the Internet and computers are very much part of today's classrooms. At some schools and some school boards, children have their own laptops. They are using the Internet on a daily basis. They're learning how to search for information. They're learning how to make those connections.

That's what we want our children to do. They're learning to be lifelong learners. They're developing a passion with that learning, and that's what we want to have our students do.

So to limit them with copyright infringement laws would be very detrimental to their learning and to their increase in knowledge. We want our students finding as much information as they can and making those connections so that they will be able to make good, solid decisions on their own.

It's all very important. We want to have that open for teachers to be able to say this is what we can do, and not limit that.

**Mr. Dean Del Mastro:** Thank you.

I know that teachers have always played the part of very important role models for kids, because they work with them when they're quite young. I would think that following the laws as indicated by copyright—and, just by extension, some of the other things we've talked about—would obviously be something that would be of high priority for the education sector, correct?

**Ms. Mary-Lou Donnelly:** Yes.

**Mr. Dean Del Mastro:** Thank you.

And Mr. Brown, thank you very much for appearing.

**The Chair:** Thank you very much, Mr. Del Mastro.

We'll now move to the second round of questioning.

Mr. Garneau, five minutes.

**Mr. Marc Garneau (Westmount—Ville-Marie, Lib.):** Thank you, Mr. Chair.

I'm trying to understand the issue here. My impression is that nobody would have any problems with teachers going and getting whatever is the best material, especially with more and more material being available. I don't think anybody has any objections to teachers going and getting the best material for teaching purposes.

My sense is that the issue here ultimately is about money. That's my impression. I don't think there's any law that prevents anybody from going and getting any material they want. At the moment, they may have to pay for it, but nobody is saying you can't have it. Copyright doesn't say you can't have it. Copyright says you can have it if you pay for it.

Am I understanding the issue here? Is it ultimately an issue related to money? On the one hand, there are those who feel they're not

being paid, but on the other hand, there is a strained school board system. Is that how you see it?

**Mr. John Staple:** From our perspective, it's clarity. It's ensuring that the act clarifies what teachers and students are able to do with material that is publicly available to them on the Internet, and also what they can do with respect to accessing print material under fair dealing provisions that are clearly within the scope of the act.

Now, if there are fees that are relative to that, which are negotiated with Copyright Canada, for photocopying purposes and so on, that's a secondary issue. That's an aside.

So from our perspective, it's the clarity, ensuring that when teachers use materials in a way that would be a normal way to use them for classrooms, they're not breaking copyright.

● (1615)

**Mr. Marc Garneau:** Yes, and you gave a good example: how many copies can you make?

**Mr. John Staple:** Yes.

**Mr. Marc Garneau:** I'm still not quite there, though, in terms of understanding it. You can make things very clear—things are very clear at the moment—without Bill C-32. They're clear.

But as I understand it—

**Mr. John Staple:** They're restrictive.

**Mr. Marc Garneau:** Well, they're restrictive depending on your point of view. You have to pay for certain materials.

With Bill C-32 there is the proposed exemption of education, which I understand you favour.

**Mr. John Staple:** Yes.

**Mr. Marc Garneau:** Okay. But that's an issue, as I understand it, about money rather than about access to materials.

You say it's restrictive, but in which way?

**Mr. John Staple:** The Internet amendment applies only to material that is publicly available on the Internet. We're not talking about copyright material. If it's copyrighted, and it's there...we're not talking about that stuff. We understand that if it's copyrighted, you have to pay for it.

We're talking about material that's publicly available on the Internet. Under the copyright legislation, as an individual I can use that in certain ways. But as a teacher I can't use it in certain ways for my class. But it's publicly available. They can all, as individuals, go and get it and use it. But if I, as a teacher, use it in certain ways that are relevant to my role as a teacher in teaching that class, I am violating copyright.

**Mr. Marc Garneau:** Are you saying that you can't use it...? But what if you were to pay for it? This is what I'm asking.

**Mr. John Staple:** But it's not copyrighted: nobody has to pay for it. What I'm saying is that as an individual—

**Mr. Marc Garneau:** Well, then, is there an issue here?

**Mr. John Staple:** The issue is that if I, as a teacher, made multiple copies of something for a class, I could be violating copyright law. If they all, separately, went and made the same copy, they wouldn't be violating copyright.

There needs to be clarity given in terms of the ability to use the material.

**Mr. Marc Garneau:** I agree with the clarity part. I'm not quite there on some of the fundamentals.

You indicated 60 pages per student. Can you break that number out for me? I assume that's primary and secondary, on average, per student, per year. Do you have any idea of how many different sources it would be?

**Mr. John Staple:** It's six pages a month per student, over all courses.

**Mr. Marc Garneau:** Is that six different projects?

**Mr. John Staple:** No, no, it's just raw numbers: 60 copies per student, per year, over all courses. That's what the study found.

**Mr. Marc Garneau:** I'm just trying to get an idea of how many sources this comes from. The 60 pages could be from one source or it could be from 30 sources. That's what I'm trying to get at.

Do you have those numbers?

**Mr. John Staple:** No, I don't, I just have the total numbers. I know there are 60 pages per student, and it works out to six pages a month per student, but I don't know where they're from, no.

**Mr. Marc Garneau:** Turning now to education, a lot of people have suggested that maybe we need to tighten up what "education" means.

Would you, from your federation, be prepared to propose to us what you understand to be education as it's conceived here? When we talk about an education exemption, can you give us your input?

I don't mean to put you on the spot here. Perhaps you could send something in to say what you understand to be education, because different people have said, "Well, what does education mean?"

**Mr. John Staple:** Yes, we can certainly do that.

**Mr. Marc Garneau:** That would be much appreciated.

**Mr. John Staple:** I think we would be against an approach to defining education in a way that places restrictive boundaries around the kinds of activity that Canadians undertake as part of the whole process of lifelong learning and learning outside of the public school system.

**Mr. Marc Garneau:** But within institutions to begin with.

**Mr. John Staple:** Yes.

**Mr. Marc Garneau:** Whatever you could give us would help.

Ultimately it's going to be nice for us to have a clear idea of what the education exemption means. Certainly, if the Supreme Court's six criteria are going to be the basis on which fair or unfair dealing is determined, it helps to have a definition of what is meant by education.

**The Chair:** Mr. Garneau, thank you very much.

[Translation]

Ms. Lavallée, you have five minutes.

**Mrs. Carole Lavallée:** Thank you very much Mr. Chairman.

My question is for Mr. Brown. If Bill C-32 is passed, you say that you will lose 85% of your income. On the other hand, the representatives from the Canadian Teachers' Federation beside you say that they don't want to pay less. What exactly they do want is not easy to understand. They say that they want to pay copyright fees and that income won't go down. In that case, how do you explain the 85% reduction? I still don't understand their position.

● (1620)

[English]

**Mr. Douglas Arthur Brown:** For clarity, they're not in a position to decide whether or not to pay: they must pay. It's the law. That's the way it exists right now.

I've heard the question of clarity brought up several times in the past hour. Ms. Donnelly was asked a hypothetical question a little earlier. I'm paraphrasing here, so correct me if I'm wrong, but she was asked to give a definition of fair use in the sense that could she foresee, with the amendments, if they went through, there would be rampant photocopying of entire works?

With all due respect to Ms. Donnelly, she's not in a position to answer that question. And that's the problem with fair dealing, that it's not spelled out. We would have to go before the courts to get a clear definition of that.

[Translation]

**Mrs. Carole Lavallée:** That would therefore mean that from now on educational institutions would be able to make as many photocopies as they wish without paying copyright fees?

[English]

**Mr. Douglas Arthur Brown:** Not necessarily. I mean, there will always have to be fees paid, but what fair dealing opens the door for is a definition, where there isn't right now, of what is fair use.

How much photocopying are we talking about? There are very clear regulations as it stands now. Without any definitive definition of fair use, again, we are put into a position where we would have to go to the courts to decide or at least support our belief that there was too much being photocopied.

I want to make it clear here that this is not a fight between educators and writers. The school system is very important for writers. When we are invited—and we're very proud to be invited—into schools, this is a point of entry for us into nurturing young minds and future readers. I reiterate that we just want to be able to be compensated for the use of our intellectual property. If people want to use it, and believe in it, it's worth paying for.

[Translation]

**Mrs. Carole Lavallée:** Your intellectual property is also in photocopies. Just because it's a photocopy, and not the whole document, doesn't mean that there is no intellectual property. Furthermore, a photocopy can be a condensed version of the created product, if I may put it in those words. Am I wrong?

[English]

**Mr. Douglas Arthur Brown:** Do you mean a review, or a critique of the work?

[Translation]

**Mrs. Carole Lavallée:** No. If, for example, a teacher copies a specific exchange from Corneille off a website, they are taking an essential part of a work to hand out to their students. Just because a copy represents a part of a work does not mean that that intellectual property does not belong to the author.

[English]

**Mr. Douglas Arthur Brown:** I think what you're addressing here is the fact that as creators we run the risk of having our work taken out of context. That is another issue that we writers are concerned about, the use of our material for personal purposes.

As it stands right now, that's another one of those grey areas. We don't know what personal use means, and who would have access to that. It is my understanding that most educators would not take that out of context, but—to answer your question—it could happen.

[Translation]

**Mrs. Carole Lavallée:** Do I still have time Mr. Chairman?

**The Chair:** You have one minute left.

**Mrs. Carole Lavallée:** I have a question for Mr. Staple and Ms. Donnelly.

Earlier on we were talking about the \$5.16 that you're being asked to pay for each of your students. Does that fee include photocopies?

[English]

**Mr. John Staple:** That is for photocopying.

[Translation]

**Mrs. Carole Lavallée:** Now, if I understood correctly—and I'm still not sure if I have—are you asking that photocopies no longer be included?

•(1625)

[English]

**Mr. John Staple:** In terms of the costing, in terms of the \$5.16?

[Translation]

**Mrs. Carole Lavallée:** You no longer want to pay copyright fees for the photocopies that you do?

[English]

**Mr. John Staple:** No.

[Translation]

**Ms. Mary-Lou Donnelly:** No, we will continue to pay.

**Mrs. Carole Lavallée:** So you will continue to pay the \$5.16. Fine.

In that case, why do you think that Mr. Brown, who is a brilliant writer and has even won awards, is telling us here today that Access Copyright will reduce his income by 85%? If you're still paying the same price then why is the writer beside you telling us that his income is going to go down by 85% if the bill is passed as it is currently worded?

**Ms. Mary-Lou Donnelly:** I don't know.

**Mrs. Carole Lavallée:** Because the amount you are paying will go down, that's what you think.

Mr. Brown, you are nodding your head. Did you want to make a comment?

[English]

**Mr. Douglas Arthur Brown:** Well, yes, that's true; if the provision goes through as it stands, they will be paying less, and therefore I will be receiving less.

[Translation]

**The Chair:** Thank you.

Ms. Boucher, you have five minutes.

**Mrs. Sylvie Boucher (Beauport—Limoilou, CPC):** Good afternoon to our witnesses.

I have several questions. Mr. Brown, I imagine that the people who are listening to us or watching us on television do not fully understand what we're talking about. Earlier you said that you have written five books and published literary magazines. Those publications have brought in more than a quarter of a million dollars. That is correct, that is what you stated. This has benefited advertisers, drafters, photographers, local bookstores, but as an author, as an artist—because you are an artist, you are an author, you are the one who wrote the book, you are the one who created it—as a creator, how much of this would you receive, perhaps not in actual dollars but in terms of the percentage of that quarter of a million dollars? Is it proportional to your cultural contribution? At the end of the line, does your copyright fee provide you with a certain amount of money? In terms of the percentage, is it worth your while?

[English]

**Mr. Douglas Arthur Brown:** Absolutely it's worth it. Writers want to be read. That's why we do what we do.

But to answer your question, regarding the books, generally speaking I would get 8% to 10%, depending on the publisher. The rest of that income, or the income generated from that book, would benefit other people in my industry.

Regarding the magazine, that was a work of love. I never took a salary for that. I was very proud that I was able to pay writers and photographers and bring their work to a larger audience.

It is generally known that for every \$1 invested in culture in Canada, there is a \$3 return. I would argue that it's even more in smaller communities in Canada. We do make tremendous contributions to the economy, to the local tax base. If you take us out, there's a lot to be lost.

[Translation]

**Mrs. Sylvie Boucher:** Thank you very much.

Are there any parts of Bill C-32, on copyright, that you like?

[English]

**Mr. Douglas Arthur Brown:** As it stands right now, there is nothing good in the bill for writers. So if the question is whether to accept the bill as it stands, I would not accept it. There's nothing there for me.

[Translation]

**Mrs. Sylvie Boucher:** You're saying that there's nothing in there for you. There's absolutely nothing that you could agree with—

[English]

**Mr. Douglas Arthur Brown:** No.

[Translation]

**Mrs. Sylvie Boucher:** —as an author.

[English]

**Mr. Douglas Arthur Brown:** No, not with the exceptions as they stand. If you remove those, I'm fine.

[Translation]

**Mrs. Sylvie Boucher:** Fine. If the exceptions were removed you could agree.

[English]

**Mr. Douglas Arthur Brown:** Absolutely.

[Translation]

**Mrs. Sylvie Boucher:** I would now like to ask a question of the Canadian Teachers' Federation.

In order to dispel the myth that this will destroy traditional books, I would like you to tell us what the clause on fair dealing for the purposes of education will allow you to do.

[English]

**Mr. John Staple:** As I said earlier, I think the inclusion of education in fair dealing will clarify the ability of educators and students to use material, within the parameters of the copyright legislation, that they could not do before. That is true of the education exemption, the Internet exemption, as well.

In a nutshell, that's basically it.

• (1630)

[Translation]

**Mrs. Sylvie Boucher:** Therefore you feel that this bill is very important.

[English]

**Mr. John Staple:** Absolutely. It's extremely important.

[Translation]

**Mrs. Sylvie Boucher:** Fine.

Do I still have time Mr. Chairman?

**The Chair:** You have one minute left.

**Mrs. Sylvie Boucher:** I will give it to Mr. Lake.

[English]

**Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC):** I just have one question for Mr. Brown.

You said the following in your opening statement:

About 85% of Access Copyright's current revenues...is at risk if "fair dealing for education" is incorporated into Bill C-32. So, I stand to lose up to 85% of my income from Access Copyright.

Now, 85% is a very specific number.

**Mr. Douglas Arthur Brown:** I said "up to" 85% could potentially be lost.

**Mr. Mike Lake:** Right. Now can you back that up, please, if you can? How did you come to 85% as a number?

**Mr. Douglas Arthur Brown:** That was supplied to me by Access Copyright.

**Mr. Mike Lake:** What was the explanation they gave you? You're using it in your opening statement, so you must stand behind it—

**Mr. Douglas Arthur Brown:** I do stand behind it.

**Mr. Mike Lake:** —and I'd like you to back it up. Can you explain to me what it means; why 85%?

**Mr. Douglas Arthur Brown:** What I can explain is that because 85% of the revenues are generated from education, any amendments to the bill that lessen what they are able to bring in, to benefit creators like me, could lessen the revenues at the end of the day.

**Mr. Mike Lake:** That doesn't sound quite as firm as you were in your opening statement, that you stand to lose up to 85% of your income.

**Mr. Douglas Arthur Brown:** I do stand to lose up to 85%, according to what Access Copyright says.

**Mr. Mike Lake:** According to what they're telling you—but what did they explain? Surely you asked them, when you decided to use this in your opening statement, to account for that 85%.

**Mr. Douglas Arthur Brown:** Well, I take them at face value. They're very honourable. And when they talk about "up to 85%", that wakes me up.

**Mr. Mike Lake:** So when they said that, you didn't say, "Oh, my gosh, I could lose 85% of my income. Why is that?"

**Mr. Douglas Arthur Brown:** Of course I asked that.

**Mr. Mike Lake:** What did they say?

**Mr. Douglas Arthur Brown:** I didn't ask them specifically; I got the material from them.

I think you're putting too much of an onus on me, in that sense. I was told that I could potentially lose 85% by the collective agency that represents my best interests.

I do not question every single item that comes my way. They are acting in my best interest. I would have to have just cause to decide to be suspicious.

I think that answers the question.

**The Chair:** Thank you very much. That will be the last word.

Thank you very much to our witnesses today.

[Proceedings continue in camera]





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