

From: Joe Banel

Sent: March 11, 2012 4:53 PM

To: Tilson, David - M.P.

Cc: Paradis, Christian - Député; Moore, James - M.P.; Thibeault, Glenn - M.P.; Angus, Charlie - M.P.; Armstrong, Scott - M.P.; Benskin, Tyrone - M.P.; Braid, Peter - M.P.; Calandra, Paul - M.P.; Cash, Andrew - M.P.; Del Mastro, Dean - M.P.; Lake, Mike - M.P.; McColeman, Phil - M.P.; Moore, Rob - M.P.; Nantel, Pierre - Député; Regan, Geoff - M.P.; ~Legislative Committee Bill C-11/Comité législatif loi C-11

Subject: Bill C-11

Dear Mr. Tilson,

I am writing to you regarding the amendments proposed to Bill C-11, in particular the addition of education as a new exception under “fair dealing”. The Bill states in its Summary that this enactment would amend the Copyright Act to:

(c) permit businesses, educators and libraries to make greater use of copyright material in digital form;

(d) allow educators and students to make greater use of copyright material;

I have been an educator for over forty years, first as a high school English teacher and then as a editor, publisher and author of educational literacy resources with major Canadian publishers. I live in Caledon, in your riding, and am currently an independent educational resource developer.

I have watched Canadian educational resources thrive throughout my career. Throughout my own school years and in the early years of my career in the 60s, many textbooks used in Canada originated in the US or the UK. However, our provincial and federal governments have done an excellent job over the years in encouraging Canadian authors and publishers. This has contributed to the growth of a healthy awareness of our Canadian culture and history among our students and teachers, as well as a thriving, entrepreneurial Canadian publishing industry.

Bill C-11 will undo all of that. When educators and students in our schools and universities come to believe that “fair dealing” means that any content, whether derived from print or digital, becomes free for classroom use, educational publishers will quickly realize that is not worth investing in new resources. After all, a school, board, or even a whole province could now purchase one copy of a book or digital product and reproduce it.

Here is what is involved in developing a typical educational resource: Most resources take a year or two to develop (longer for a multi-grade series; for example it took me seven years to complete a recent eight-grade literacy series). The proposal and prototypes are first researched and reviewed carefully by educators across the country at all levels, from teachers and students to principals, educational consultants and university professors. Then if the business plan proves viable, the manuscript goes into production with a team of authors, editors, designers and technical people. Then the files are sent to a printer/ binder or packager, and stock has to be warehoused and shipped. So it takes many thousands of dollars (and often millions in the case of a multi-grade series) to develop a quality educational resource. The publisher (as well as

the author who is depending on royalties) typically waits one to five years to recover the costs and eventually see a profit. No publisher (or his/her banker) would want to invest the kind of money necessary when the business plan fails to forecast sufficient sales because a school or province can now purchase a single copy and reproduce it.

What happens as a result?

1. Canadian-authored and published resources very quickly cease to be available. The Canadian educational publishing industry folds, along with thousands of jobs. The trade publishing industry is hurt badly as well, as many Canadian novels and picture books are purchased by schools. The printing industry is cut back even further from its current all-time low, curtailing its contribution to the Canadian economy.
2. Teachers then resort to developing their own worksheets and activities, or try to find them online. The problem with this is that, as the majority of educators will tell you, such products are unresearched and unvalidated, not likely to be based on best practice, and not likely to help teachers follow the provincial curriculum. Teachers trust professionally-published resources for good reasons: They are vetted carefully, are based on curriculum guidelines, are designed to be manageable, and are engaging for students. Busy teachers rely on such resources, since many teach multiple subjects and/or classes, each with their own very complex curricula, and they look to the expertise of authors and publishers for dependable materials.
3. Students then end up with homemade resources. Gone are the engaging, colourful, well-researched and sound books and software that they were accustomed to using. Or if they do have engaging books and software, they come from foreign sources and they cost much more than schools can afford. If teachers try to copy these freely, of course, they will be infringing on international copyright laws. (Note the irony that only Canadian publishers and authors would be deprived of their fair compensation.)
4. Thus for the next generation of students, awareness of Canadian culture and history essentially comes from television, which is not highly motivated to portray or history or culture.
5. Canadian authors, especially authors of educational resources, including university professors as well as educators at the school level, would have absolutely no incentive to develop resources, whether for a publisher or independently. They would no longer receive royalties of any substance. Many authors have opted for royalties instead of salaries or fees throughout their careers and had every right to expect to be compensated fairly. The Access Copyright organization, which now collects funds from schools that photocopy materials and distributes them to authors and publishers, would soon no longer be able to distribute any such payments.

It is unfair to expect educational authors and publishers to work for free. If we should work for free and make our intellectual property available to schools at no charge, then why should not teachers, principals, school trustees and anyone else associated with education share their knowledge and work for free, and why should not Apple, Microsoft and all other software developers, film producers, and illustrators make their products available to schools for free - and so on. Not only would such a policy be grossly unfair and untenable, it would ultimately be an embarrassment to the Canadian government.

So my questions to you are:

1. I depend for my livelihood on the royalties from resources that I developed over the course of my career. This is my only source of income. What plans does the government have to compensate me fairly for the loss of my future livelihood if Bill C-11 causes this to happen?
2. The individuals in government who devised this bill continue to champion the concept of “fair dealing” in educational contexts, despite knowing all the downsides. Can they provide a clear statement of their rationale?
3. What research can these individuals put forward to support their position? For example has a similar bill been passed in other countries, and what was the result? Have they surveyed educators, publishers and authors and recorded their responses and considered all the implications? Will they share the findings of such research?

I look forward to your response to these pressing questions, as there is a great deal at stake for classroom teachers, the next generation of students, Canadian culture and identity, the publishing industry, and lastly, the economic future of authors and developers like myself whose sources of incomes run the very real risk of being eliminated.

Respectfully,

Joe Banel