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Chair

Mr. Dan Ruimy

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• (1405)

[English]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Welcome, everybody, to beautiful, sunny Vancouver. This is meeting 114 of the Standing Committee on Industry, Science and Technology, as we continue our study, the five-year legislated review of the Copyright Act.

We've been seeing witnesses for a few weeks already. This week we've been on a five-day road trip, in Halifax, Montreal, Toronto, Winnipeg, and Vancouver. It has been an invaluable trip, because we have met with such a diverse group of people who have given us lots of information to contemplate as we continue to move forward.

If you've been following the proceedings, we've divided this up into sections. Each section is meant to help us build our own information and knowledge on copyright. We will be meeting with authors, radio, television, and publishing. It has been quite enlightening.

We're supported, of course, by our wonderful staff. We have translators here, so when you speak, perhaps you could speak a little slowly. Everything said today will be recorded, as well as translated.

Our clerk keeps us on track, and we have two of our three analysts with us today. Our analysts are the ones who will take all this information and help us by doing briefing notes and giving us background information, and at the end of the day, will help us write our reports and our recommendations. We look to our wonderful, magnificent analysts to do that. We have other support staff here as well.

Thank you all very much.

Today we have with us, from the University of British Columbia, Susan Parker, University Librarian. From the British Columbia law association, we have Christine Middlemass, President.

Ms. Christine Middlemass (President, British Columbia Library Association): In fact, it's the British Columbia Library Association.

I think some lawyers might be unhappy.

The Chair: Did I say "law association"? It has been a long week.

From the Canadian Association of Learned Journals, we have Rowland Lorimer, Treasurer. From the Canadian Association of Law Libraries, we have Kim Nayyer, Chair of the Copyright Committee.

You will each be given five to seven minutes, if you need it, to do your presentation. Once we go through everything, we will go back and forth with questions.

We'll start with UBC. Susan Parker, you have up to seven minutes.

Ms. Susan Parker (University Librarian, University of British Columbia): My name is Susan Parker, and I'm the University Librarian at the University of British Columbia, and I'd like to thank you all for the opportunity to speak before you today. With me today is Allan Bell, associate university librarian for digital programs and services at UBC; and Michael Serebriakov, legal counsel in the Office of the University Counsel.

UBC is a global centre for research and teaching, consistently ranked among the top 20 public universities in the world. We are Canadian authors and publishers as well, publishing material through UBC Press and other publications. The UBC library is the largest academic library in British Columbia, and one of the two largest in western Canada. In 2017, our total acquisitions budget was close to \$17 million. That is \$17 million spent each year on purchasing and licensing Canadian and international content in various formats, from print materials, which comes to about 20% of the total, to various kinds of digital content making up the other 80%.

I am here to reinforce the following message:

We are focused on fairly compensating content creators and their publishers to foster and support the creation of the best resources for our students and faculty so that they may achieve excellence in learning, research, engagement, fostering global citizenship, and advancing a sustainable and just society. These resources are increasingly digital resources, and they provide enhanced educational features such as enhanced content, embedded collaboration tools, and access 24-7.

As the digital industry inexorably grows, paper-based publishers are seeing their industry erode. The international trend is clear. Paper resources cannot compete with digital, and this is independent of fair dealing or the Supreme Court's 2012 confirmation that fair dealing for private studies applies to the educational context. Even before 2012, UBC was buying fewer and fewer paper resources. Our faculty members are distributing fewer paper copies and making fewer paper course packs, and our students are demanding more digital content.

The plight of Canadian authors and publishers is very real. Many of the most prolific content creators are members of our own academy, so we are mindful of the importance of a copyright system that fosters the dissemination of content for the benefit of society and simultaneously creates the right incentives for creators. Eliminating or restricting user rights, or imposing extremely onerous statutory damages for infringement, will not reverse the digital revolution, nor will it restore the viability of the business model of paper-based publishers and their collective agencies.

What it will do is several things. It will increase the costs of an already increasingly outmoded format, which will only accelerate the transition to digital course material. It will hurt authors and publishers as they, too, exercise user rights extensively. It will likely have unintended consequences in the digital sphere where user rights are a necessary counterweight to restricted forms of use that are imposed upon users, including a digital lock that may threaten to keep all content behind a paywall, and the undue bargaining powers that statutory damages will grant to collective societies.

UBC's request is for Parliament to defer action on user rights. There are several important court and Copyright Board decisions that should be allowed to play out now. The market is already developing its own market-based solutions to what may appear to be an intractable problem. For example, large-scale subscription arrangements are being floated like those that have revitalized the music and television industries. Instead, Parliament needs to use this opportunity to support a robust public domain. The public domain refers to the body of works where the author has waived copyright, or where the copyright term has expired. Currently, the term of copyright is the life of the author plus 50 years. To put this in perspective, a work published when the author is age 30, and that author lives to age 90, is protected under copyright for 110 years after its creation. That is more than adequate time for the author, heirs, and publisher to benefit from the work.

Realistically, of course, most copyright works have little or no commercial value—this testimony, for example—or exhausts the commercial value relatively quickly. To support a robust public domain, we urge Parliament to do two things: first, to reject calls to further extend the term of copyright by an additional 20 years; and second, to develop a means by which libraries and archives may empower researchers, educators, and the public to utilize and disseminate what are called orphan works.

● (1410)

Orphan works are works that are protected by copyright, but the current copyright owner is unknown or cannot be found, the author has passed away, or the original publisher is defunct, and it's unclear who has the rights. There is a debate about how to address this issue, and I stand here to ask this committee to have the debate and to resolve to act.

Libraries across Canada are full of important works that demonstrate the richness and diversity of Canadian culture and scholarship. Parliament has the power to create a system that ensures that Canadians can fairly and respectfully tap into a rich source of Canadian content.

In closing, I ask you to please keep your eyes on the horizon and ensure that, whatever you do, you're facilitating progress and

innovation rather than seeking to bolster any particular industry or format. The world has changed. We can't turn back the clock.

Thank you very much.

The Chair: Thank you very much.

From the British Columbia Library Association, we have Christine Middlemass. You have up to seven minutes.

Ms. Christine Middlemass: Hello, and thank you for the opportunity to address you this afternoon.

My name is Christine Middlemass. I'm the incoming President of the British Columbia Library Association, the voice of libraries in British Columbia. With me is Donald Taylor, our copyright representative for BCLA and a copyright officer at Simon Fraser University.

Libraries play a key role in the use, dissemination, and creation of copyright-protected works. We empower Canadians in their pursuit of lifelong learning, research, and innovation by preserving knowledge and by providing equitable access to information. The Copyright Act and its exceptions likewise underpin our mission. Libraries support Canadian creators by purchasing and promoting their works as well as by providing services and information resources for their use in the creation of their new works.

BCLA thanks Canada for maintaining the copyright term of life plus 50 years. BCLA likewise is in agreement with the fair dealing and educational exceptions in the act and with the 2012 exception for non-commercial user-generated content.

Kindergarten and post-secondary libraries are hubs for education, as are public libraries through their collections, literacy programs, outreach to new immigrants, and wide variety of community programs, from reading clubs to indigenous programs.

All library users depend on exceptions in the Copyright Act. For example, fair dealing for education or research allows instructors, parents, library patrons, and library staff to make copies for research and educational uses and allows libraries to send articles and other short excerpts to patrons of less well-endowed libraries as part of interlibrary lending. These activities enrich society and make education and lifelong learning a reality for all Canadians.

Many post-secondary libraries and large urban public libraries in British Columbia have makerspaces. The current fair dealing provision for non-commercial user-generated content in the Copyright Act allows library users to experiment and innovate in these makerspaces. Loss of these provisions will constrain their creativity.

B.C. libraries invest heavily in collections for their patrons. In 2016, approximately \$29 million was expended collectively within the province of British Columbia on collections, both physical and digital. Definitely, the main increases were our digital collections.

Unlike printed material, digital works, such as e-books and online reference sources, are governed by licences, and all their uses, including reproduction, are governed by these licences. This often means that clauses in a contract override statutory rights in the Copyright Act. Libraries may not be permitted by the licence to lend to another library through interlibrary loans, and library users may not be permitted to print the pages. As these restrictions are barriers for our patrons to education, research, and lifelong learning, BCLA would like to see the Copyright Act stipulate that contracts cannot override exceptions in the act.

Technological protection measures, or TPMs, are also used to limit fair dealing and other statutory rights in library licensed digital resources. In order for libraries and library users to exercise their rights in the Copyright Act, BCLA recommends that the act be amended to exempt fair dealing and other exceptions from the prohibition on the circumvention of technological protection measures.

• (1415)

Digitizing and making available historic materials, such as photographs, postcards, and posters, to a wider public is fraught with copyright implications for B.C. libraries. The uncertain copyright status of orphan works, the fact that the non-locatable copyright owner regime applies only to published works, and the extreme difficulty of tracking down myriad copyright owners prevent cultural institutions from digitizing historic works of significant cultural and historic value to Canadian communities. Therefore, BCLA recommends that the Copyright Act be amended to clearly state that libraries, archives, and museums are only required to remove material if they infringe copyright when they had reasonable grounds for believing that their use of the copyrighted work was for a fair-dealing purpose. They should not be required to pay statutory damages. This change to the provision would protect Canadian educational institutions, libraries, archives, and museums, from being sued for digitizing orphan works in good faith.

According to Statistics Canada, Canadian publishers reported a profit margin of 10.2% in 2016. Canada is also the sixth most lucrative global market for streaming music sales and royalties. As well as being significant purchasers of Canadian content, libraries and librarians have long supported and participated in programs like the public lending right to ensure a vibrant Canadian culture. However, we believe copyright legislation is an inappropriate tool for subsidizing Canadian creators. Rather, BCLA encourages the pursuit of public and private programs, such as the public lending right, to help foster and remunerate Canadian creativity.

We strongly urge Parliament to maintain the amendments to fair dealing and the educational exceptions added in 2012.

Thank you again for the opportunity to speak to you.

The Chair: Thank you very much.

Next is the Canadian Association of Learned Journals. Dr. Lorimer, you have up to seven minutes.

Dr. Rowland Lorimer (Treasurer, Canadian Association of Learned Journals): Thank you very much.

As the chair noted, I am Rowland Lorimer. I'm the founding director of the professional master of publishing program at Simon Fraser University and Treasurer of the Canadian Association of Learned Journals. I appear on behalf of the Canadian Association of Learned Journals, and I thank you very much for this opportunity.

Before I start, I'll add that I'm also the publisher of eight different journals, seven of which are online, open access journals. One has a print component and is open access to the level that is required by the tri-council agencies.

Canada has over 630 scholarly journals with budgets of over \$50,000 per title. This amounts to about \$30 million of economic activity. About 10% of funding comes from the Social Sciences and Humanities Research Council. The rest comes from professional and institutional support and market earnings in and outside Canada.

The notion of user rights and the inclusion of education as fair dealing are founded on the social behaviour of single readers. They wisely affirm exchange amongst readers, and facilitate the use of modern copying technology to allow close study. The central problem for Canadian journal publishers and most Canadian publishers is that on the legal foothold of an education user right, educational administrators have seized the right to deliver all kinds of mostly unlicensed content, including core learning materials, to students without recompense to authors and publishers. Further, many educational institutions require their instructors to compile content that pointedly avoids triggering the education community's self-defined rules for compensating authors and publishers.

These rules were tested in Federal Court in a suit by Access Copyright of York University, and they were found wanting. The court found that the vast majority of copied content was unlicensed. It mainly came from books, but it also included unlicensed Canadian journal content. In a way, then, the talk of millions spent on licences is mostly irrelevant to the Canadian content found in print course packs and uploaded to learning management systems without compensation. Our suggestion is that the education user right be treated as a self-initiated right of biological persons and as not extendable to institutions or other persons downloading and distributing on their behalf, nor as a means of delivering course content.

In scholarly journal publishing, recompense to authors is not an issue. Authors receive a basket of benefits for publishing their research. For scholarly journals, the issue is that educational administrators are undercutting the resources Canadian journals need to maintain efficient and effective not-for-profit publishing and distribution of Canadian research.

In Canada, journal costs are very affordable, largely because Canadian journal publishing is dominated by not-for-profit organizations. One fairly typical example of a subscription-based journal has 55 Canadian institutional subscribers who pay the journal just \$7,000 in direct subscriptions. The journal attracts roughly 200,000 article views per subscription. The cost to Canadian institutions is 3.6¢ per article view, yet the education administrators want more and are taking more without recompense. Rather than supporting the development of Canadian journal publishers for their primary focus on knowledge dissemination, educational institutions are crippling the very sector that is best able to make knowledge available in an affordable fashion.

• (1420)

In short, the seizure of user rights by educational institutions to deliver course content without compensating creators and publishers weakens the generation and communication of ideas. For journal and other publishers, it forecloses on opportunities to build intellectual property-founded businesses, a growth sector in developed economies. More generally, it deprives Canada and Canadians of jobs and opportunities in copyright-based economic activity.

For individual students, it is already erecting unfair barriers to the generation and communication of Canadian knowledge for about the cost of a case of beer per student.

Thank you.

The Chair: Thank you very much.

Next we will hear from the Canadian Association of Law Libraries.

Kim Nayyer, you have up to seven minutes.

• (1425)

Ms. Kim Nayyer (Co-Chair, Copyright Committee, Canadian Association of Law Libraries): My name is Kim Nayyer. I'm here on behalf of the Canadian Association of Law Libraries, or CALL. I want to thank the committee for your careful and thorough work in this statutory review process. I do appreciate the opportunity to speak here in Vancouver, and I thank you for undertaking these regional hearings.

Our association has 370 individual legal information professional members representing 210 organizations from various sectors of the legal environment. About 25% of our membership work in law firms; 22% are in courthouse and law society libraries; 21% are in the academic sector, mostly, but not only, in law school libraries; and another 10% work in government libraries. Publishers represent about 5% of our membership, and 12% of our members indicate other affiliations. Many of our members are also authors. I myself am in the academic sector. I'm the director of the law library at the University of Victoria and the associate university librarian for law.

This review is of great interest to CALL and our committee. In fact, our committee was established some decades ago to address copyright amendments of that day. Our members work daily with material that's protected by copyright law and with licensed copyright-protected material.

Today I'm going to address four points: interlibrary loans, fair dealing, overriding licence provisions, and crown copyright.

First, on interlibrary loans, I'll draw your attention to subsection 30.2(5.02) and the requirement that a library, as defined by the act, take "measures" to prevent an interlibrary loan borrower from taking certain actions set out in that section. In practice, we don't find our members to be in a position to meet a positive obligation to enforce loan terms compliance by interlibrary loan borrowers. Some libraries have the technological capability to limit use of interlibrary loaned materials, but many do not. We really aren't practically capable of meeting an onus of accountability for the actions of interlibrary loan borrowers who are in other locations, yet a core function of law libraries is to share resources when they are needed and as law permits. We see this as an important element of access to legal information and therefore access to justice. We suggest that perhaps the addition of "reasonable" before "measures" would meet the policy and legal goal of that section.

Next is fair dealing. I'll just speak briefly on this point. As noted, in the Canadian Association of Law Libraries we have a large range of members, just like Canadian society itself, and in our experience, fair dealing as it stands now generally works well. The current provisions are flexible and responsive. Our view is that the interpretation of what constitutes a dealing that is fair should continue to be left to the context.

With regard to overriding provisions in licences, we suggest that the act stipulate that licence terms not override activities otherwise established by the act as permissible. Occasionally, some of us are able to negotiate out of particular provisions in licences that would override activities made permissible by statutes, such as some aspects of fair dealing or interlibrary loans, but not all of our members are in that position. Licences are often opaque, click-through, or otherwise presented as non-negotiable, or they may be presented to someone less connected with the daily use of the licensed material. The result is often that our members are inadvertently or inappropriately contractually limited from doing what Parliament otherwise granted them the right to do.

Finally, I would like to speak about crown copyright. Last fall an e-petition presented to the House of Commons requested the addition of a section 12.1 that would provide that works covered by section 12 be no longer protected under that section upon being made available to the public. Many of our members support that view. I have to say, though, the question has not been formally presented to my association, so I can't speak in support of it or not in support of it on behalf of the association. Today, however, I'd like to bring to your attention another idea related to section 12. Our view is that public access to the law of all the jurisdictions of the country is central to access to justice.

•(1430)

Our study of section 12, crown copyright and the royal prerogatives, and the origins and purposes of the Copyright Act, suggest that a fair and modern interpretation of Canadian law is that the act in section 12, or in any other section, should not be seen to govern primary law. It may be time for the act to state, whether in section 12 or elsewhere, that primary law, and particularly case law, is not a proper subject matter of the Copyright Act.

The trial court and the Supreme Court of Canada in the *CCH v. Law Society of Upper Canada* decision touched on this point tangentially, although the particular question was not an issue in that case. Paragraph 35 of the Supreme Court decision is worth noting.

In practice we do treat this as a given, as copying of primary law is necessarily done in the course of our members' work and indeed in the daily lives of Canadians. We reproduce primary law to file in court. Courts reproduce it for carrying out their business. Law libraries and law teachers must reproduce law for the purposes of legal education. Clarity on this would enable other useful activities, and furtherance of access by Canadians to the laws that govern us. Our members and others would then be unhindered in creating tools and resources to enable Canadians to access our own laws.

An example from the U.S., where as I understand it primary law is expressly within the public domain, is the Harvard Law School library's recent digitization of the entirety of published U.S. case law, removing proprietary content from their source books. They've made this content freely available to the public, and they're working with that digitized case law as data to make new and useful presentations of legal information.

My association, CALL, suggests an addition to section 12 to confirm that case law, and perhaps legislation, are not works within the meaning of the act, and so aren't subject to its provisions, or Parliament may simply provide that legislation and case law of the jurisdictions of Canada are in the public domain.

Thank you very much for your consideration of my submissions. I'll do my best to answer any questions you have.

The Chair: Thank you very much.

We're going to move right into questions, with Mr. Sheehan.

You have up to seven minutes.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): Thank you very much to our presenters, and for everyone attending this evening. It's great to be in the chair's backyard. We've been taking the proverbial show on the road, and doing that gives us as a committee an opportunity to hear from the various regions in this country.

My first question is going to be for the presenter from UBC, and it will be consistent with some of the questions I've been asking other universities around course packs. I'm interested in knowing how you apply and enforce copyright policy for the preparation of a course pack.

Ms. Susan Parker: We do have a system that we use. I would actually ask my colleague Allan Bell to come to the microphone to talk about that.

The Chair: Just for the record, would you state your name and your position, please.

Mr. Allan Bell (Associate University Librarian, University of British Columbia): I'm Allan Bell, associate university librarian at the University of British Columbia.

We go through a rigorous process when we make a course pack. I have to point out that our course packs have been declining quite dramatically, even though we have been applying fair dealing in those course packs to make them cheaper for our students. Over the course of the last few years, the revenues have gone from \$1.32 million to only \$0.30 million, so \$300,000. That's typical for many universities and certainly for ours. Our students are demanding more digital content and more digital experiences.

Selling photocopies to 19-year-olds is something that does not work today and certainly won't work tomorrow.

Mr. Terry Sheehan: Maybe you can delve a bit more into the electronic usage. You talked about the decline of course packs, but do you have numbers going the other way?

Mr. Allan Bell: I sure do.

I have a great graph that actually graphs it against our circulation, to also show that print is being used less as digital is being used more.

Mr. Terry Sheehan: Could you submit that to our analysts?

Can you give a brief description of the graph?

Mr. Allan Bell: Basically, we've gone from 21% electronic in 2002 to 82% electronic in—

Mr. Terry Sheehan: It's flipped.

Mr. Allan Bell: Yes, it has flipped entirely over the course of time, from 2002 until today.

The other thing is the circulation. Our books are being used less. Indeed, many of our books are being put into a storage facility, where they are safely not being copied.

To go back to the course packs, what we end up doing is using our library licences, many of which allow us to put that into the course pack. We apply fair dealing to that, as well as anything else we license to be able to put it in.

•(1435)

Mr. Terry Sheehan: That's in there as well.

Mr. Allan Bell: Yes. I have stats on that from the bookstore, if you'd like me to do a little bit more with that.

Mr. Terry Sheehan: Yes, it would be great to have some more stats on that as well.

This is a continuation of the line of questions I have been asking. How does the university inform, educate, and enforce its own copyright policy as it relates to the university? For the library and a variety of people, they are very complex policies. We have also heard about having a poster on the wall by the photocopier kind of thing. Could you describe that for us? I see you nodding your head. You obviously have one.

Ms. Susan Parker: Indeed, we do have the poster on the wall, but that's really not education. That's prophylactic, I guess, really.

A lot of the education we do in the library context at UBC involves a host of things regarding literacy about intellectual property, because not only are students and faculty members creating and using other people's work, but they also then create and use one another's intellectual property.

It's become a suite of information we give to students in one fashion and to faculty members in another, in their appropriate context. Students are specifically instructed by librarians about what is and is not fair dealing in Canada so that they understand exactly what they're doing when they are violating that concept or not complying to it.

What we express is that the library is an exemplar of using fair dealing properly and that we can explain it to them and show them to do it because they themselves are creating their own content and want that to be treated the same way.

I would say it's an iterative process with students over time, because they're with us for a few years. As they progress in their studies, it may be more related to the particular field of study they're working on.

With faculty members it's an ongoing effort. You don't get them as much or as often, so sometimes you start from zero every time. I think, however, that our faculty understand what the library's policies are. We explain them, and we make it very easy for them to comply by providing staff members to do all the work for them in educating them about that process.

Mr. Terry Sheehan: Very good.

Mr. Chair, how much time...?

The Chair: You have a minute and 20.

Mr. Allan Bell: As Susan said, we have an e-reserve system we use, and our staff looks over all of the material that goes in there. We have an annual click-through of the copyright guidelines and requirements for the university. Every year people click through our requirements, and if we change our device, they have to click through it again. That's another thing we've done.

Also, in the context of the Connect learning management system, there's a metadata template through which the faculty members tell us why they think they can put a file into the learning management system.

Mr. Terry Sheehan: You have numbers, then, associated with—

Mr. Allan Bell: I can definitely give you the numbers in the context of the e-reserve system, absolutely.

Mr. Terry Sheehan: One of the questions I do ask is whether you track and whether you have the numbers. If you can submit those numbers to us, that would be most helpful to paint a picture of what's happening at UBC.

Mr. Allan Bell: I sure can.

Mr. Terry Sheehan: Part of what we're trying to do here is explore the various ways these things are undertaken and take a look at best practices at the same time. That's what we've been doing.

The Chair: We're going to move to Mr. Jeneroux.

You have seven minutes.

Mr. Matt Jeneroux (Edmonton Riverbend, CPC): Thank you, Mr. Chair.

Thank you, everybody, for being here today.

I'll start my questions on the open access policy, beginning with Mr. Lorimer, and then I'll move to a bit more of a focus on fair dealing and Access Copyright, which will most likely be for Ms. Parker.

Mr. Lorimer, in February 2015, the then science minister, Ed Holder, introduced an open access policy which mandated that all publishing that resulted from research funded by the tri-council must be freely accessible to the public within 12 months of their publishing. Given that a large portion of tri-council grant money is delivered to universities, can you speak on behalf of your organization as to whether or not you supported that policy when it came forward?

• (1440)

Dr. Rowland Lorimer: Yes, the Canadian Association of Learned Journals supports that, and generally, Canadian journalists, I would say a good 90%, follow that policy and make it available within 12 months. We don't have a quarrel with that.

What we worry about is whether the policy may end up going further so that we can't earn revenues in Canada or outside of Canada. Given the 12-month window, a journal can still earn substantial revenues.

Mr. Matt Jeneroux: Are you concerned that it would be shorter than 12 months, or are you concerned that it would extend to other areas?

Dr. Rowland Lorimer: No, we're concerned that it might go shorter than 12 months.

It works for science journals. You can go shorter in some sciences, but in social sciences and humanities, and I was just doing some research on this, the 20 most used articles in one of the journals I am involved with were published between 1992 and 2009. That's where you're getting the most use, so 12 months isn't really a lot of protection, and we rely on the good graces of the libraries to continue to subscribe to the latest.

Mr. Matt Jeneroux: Right, okay.

Putting aside the 12-month window—keeping that the same but extending it outside the tri-councils—would you be supportive of that extension?

Dr. Rowland Lorimer: Do you mean extending it in the sense of requiring all the content of all journals?

Mr. Matt Jeneroux: No, I mean all publicly funded research. I'm speaking specifically about the granting councils.

Dr. Rowland Lorimer: Yes, we would support that, but with the understanding that journals add considerable value. They add it not only in the sense of peer review but through professional editing and professional layout, and so forth. There is work being done. We don't sit around and just collect a little bit of money for shuffling things online.

Given that recognition, yes, we would support publicly funded material being made publicly available.

Mr. Matt Jeneroux: Okay.

You referenced the position paper on journal open access policies, in which you note, “there remains a substantial difference of opinion among members of the Working Group about how a move toward open access should be pursued”.

Could you elaborate on what some of those differences would have been?

Dr. Rowland Lorimer: Sorry, but what are you quoting from?

Mr. Matt Jeneroux: It is the position paper on journal open access policies.

Dr. Rowland Lorimer: Ours?

Mr. Matt Jeneroux: Yes.

Dr. Rowland Lorimer: I'm sorry, it's doesn't immediately come

Mr. Matt Jeneroux: The CALJ has published “CALJ Position Paper on Journal Open Access Policies”, which recommends that all journals adopt open access policies that permit free digital access for articles, and so on and so forth.

In there is a quote that says there was “a substantial difference of opinion among members of the Working Group about how a move toward open access should be pursued”.

Dr. Rowland Lorimer: Yes, I understand. What we were basically referring to was that there are various business models for moving forward. Some would immediately have all their content be open access and there wouldn't be anything more to it than that. There are other journals that earn considerable income and sell their content to secondary aggregators, which sign contracts with foreign aggregators, secondary publishers, really, and make them available. They're taking their earned income and putting it together with their costs, effectively, to make it open access as soon as possible, but they are trying to maintain a presence in the marketplace to earn enough income to have a quality journal.

Mr. Matt Jeneroux: Okay.

In the same report, you also note that there is lack of copyright savvy in the science community. What support does the community require to better understand the connection between research, copyright, and publishing?

• (1445)

Dr. Rowland Lorimer: Basically, the lack of savvy is that when people and academics publish in a journal, they think that is making it public, and they believe that they have a right to do anything they want with an article they've handed over to a publisher that has copyright. They effectively think they can put it up on their own websites or in an institution or a repository, and so forth.

The sophistication is growing, but there is a lot of material that's being given away that actually belongs to publishers.

Mr. Matt Jeneroux: Yes. Okay.

Moving to you, Ms. Parker, did UBC opt out of Access Copyright in 2012?

Ms. Susan Parker: That's correct.

Mr. Matt Jeneroux: That was pretty early on, essentially when the new legislation came into place. Were you there in 2012?

Ms. Susan Parker: No, I was not there. I've been at UBC less than a year.

Mr. Matt Jeneroux: Perhaps someone from the audience was there.

Ms. Susan Parker: I was going to say that I could ask Allan Bell to answer. He was there at that time.

Mr. Matt Jeneroux: Allan Bell was there. Perfect.

Can you walk me through the decision to move away from Access Copyright? I'm under the impression that you guys are now doing it yourselves.

Mr. Allan Bell: We opted out in 2011, and we did that based on the analysis of the tariff. The tariff came in at \$45 and had removed the indemnity. It had a lot of surveillance and other aspects to it that we objected to. We worked on that with Universities Canada and then AUCC. When AUCC had a model licence, we looked at that again, and we decided that it wasn't in the best interests of our institution as well. The main reason was that we were doing much less photocopying, and a reprographic licence was less valuable to us at that point in time.

That was a bold and difficult move—don't get me wrong on that—but that was our analysis of the licences that were available, that it would have been worse for us as we moved to more digital delivery of resources to continue to pay a reprographic licence. We were doing much, much less photocopying. Essentially, we were buying a book, then buying a reprographic licence to copy it, and then buying the digital material on top of that. There was a lot of overlap and double paying. That's what our analysis showed us.

Mr. Matt Jeneroux: The chair is going to do his job and cut me off right away, but perhaps I can get one quick question in and one quick answer back.

Do you have any relationship right now with Access Copyright, directly or indirectly?

Mr. Allan Bell: We do have a relationship with them in the context of course packs. When we need to get transactional licences for course packs, they come from Access Copyright.

Mr. Matt Jeneroux: Course pass is a vendor...?

Mr. Allan Bell: No, it's course “packs”.

Mr. Matt Jeneroux: Oh, okay.

Mr. Allan Bell: Printed course packs are on the decline and they are going to disappear.

The Chair: Thank you.

Mr. Jowhari, you have seven minutes.

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you, Mr. Chair.

Mr. Bell, you might want to come back to the table.

Voices: Oh, oh!

Mr. Majid Jowhari: You're going through all the numbers.

First, to all the panel members, thank you for making your presentations. Your contributions have definitely helped us in making sure that our study is comprehensive.

Ms. Parker, I want to go back to a comment that you made, and which I think Mr. Bell echoed, around the fact that Universities Canada, as we've heard from other testimony, said that they pay more now than before for access to copyrighted material. You indicated that you're spending about \$17 million. Of that, about 80% is digital and 20% is print.

Can you give me a sense of what the change has been since 2012, either up or down in terms of your expenditures, with regard to your purchases in licensing?

Mr. Allan Bell: From 2012?

Mr. Majid Jowhari: Yes.

Mr. Allan Bell: We have it back to 2002.

Mr. Majid Jowhari: Okay. You've gone from what to what?

Mr. Allan Bell: We track electronic expenditures and print expenditures because they're taxed differently. We can tell you exactly what we've spent—one-time electronic, serial electronic, monographs, and print serials—in terms of total expenditure.

Mr. Majid Jowhari: Fair enough. Can you give me your totals from 2002 and then your totals now?

• (1450)

Mr. Allan Bell: It was \$11,947,482 in fiscal year 2002-03, and it was \$16,896,011 in—

Mr. Majid Jowhari: So it was about \$5 million over 15 years.

Mr. Allan Bell: That's correct.

Mr. Majid Jowhari: Okay.

On the digital you showed us, it's reversed at 20% and 80% of—

Mr. Allan Bell: Right. We buy content to support the teaching and learning at UBC, and increasingly it's become digital.

Mr. Majid Jowhari: Can you break it down by how much of it is from Canadian publishers versus international or non-Canadian publishers?

Mr. Allan Bell: This is what I have tried to do, based on the questions in the past. We were going to try to use something in the MARC record to try to do that, but I need a bit more time on that analysis.

Mr. Majid Jowhari: Okay.

Mr. Allan Bell: This digital disruption has also affected libraries, because most of our processes were for when information was scarce. Now that information isn't scarce in the digital age, all of our processes have changed too.

If I have a little bit more time with your analysts, we can give them some data on that.

Mr. Majid Jowhari: Sure. Can you also submit, if you have it readily available, the academic journal versus generalized acquisitions? Do you have that breakdown?

Mr. Allan Bell: That will be tougher, but yes, we can give that a shot too.

Mr. Majid Jowhari: Okay.

Can you or Ms. Parker share your experience vis-à-vis open access and the development of open educational resources at UBC?

Mr. Allan Bell: We've been tracking that in the context of the bookstore as well. In their analysis, they think that about \$500,000 has become open access, and therefore it's not revenue for the bookstore anymore. The university tracks that on a site called Open UBC. They estimate that UBC students saved \$4.7 million to around \$6 million last year in the adoption of open learning materials.

There's a lot more data on that site that might be of interest to you as well.

Mr. Majid Jowhari: I have a first-year student at university. He bought a book and he had a course pack. He's also online using a lot of material. I told him I was doing a study on copyright, and I asked him if he'd been taught how to respect the copyright laws.

How do you go about ensuring that the students, or the instructors, for that matter, when they're using the printed course pack or the electronic course pack when they are doing their homework, etc., are not breaking copyright laws?

Mr. Allan Bell: That's a tough question, because piracy is generally not just a student problem or an educational problem. I think it's a broader societal problem. It's people who download *Game of Thrones* or use a proxy to try to get different content.

Mr. Majid Jowhari: Have you had cases where you've had to reprimand an instructor? What was the process?

Mr. Allan Bell: Everything is funnelled through the scholarly communication and copyright office. If there is something, I send it to the provost's office.

Mr. Majid Jowhari: How do you detect if an instructor or student is not in compliance?

Mr. Allan Bell: Often people will write us questions, and we will help guide them and say, "That's not the right way to do it. This is the right way to do it." The copyright librarians actually answer a lot of questions from faculty to try to guide them in the right way.

Mr. Majid Jowhari: So there is really no oversight or monitoring system. It's basically self-initiated by either the student or the instructor.

Mr. Allan Bell: Arguably, notice and notice is an oversight system. We do deal with that in the copyright office. When people get a notice and notice we work with them on that. We have been doing education and support. We're looking at the ramifications of York versus Access Copyright right now. I think it's inevitable that we start talking about how to proactively monitor more than we have in the past.

We've been trying to get people to use our e-reserve systems, where we do all of this work for them so that they don't have to worry about it at all, but you're right; it's one of those things where I think we will have to go into more monitoring, as the original AUCC guidelines outlined.

Mr. Majid Jowhari: Ms. Nayyer, can you help me understand how law libraries collect material differently from other libraries in terms of digital format or real content?

• (1455)

Ms. Kim Nayyer: Again, it will vary quite a bit with the particular type of law library. I work in an academic law library. I actually forgot to mention that I also oversee the copyright and scholarly communications office. Many of our materials are licensed. For legal materials, it's quite interesting, because when we exited the Access Copyright agreement, we found in our review that many of the resources that were used in the legal program, the law school, were not actually covered in the Access Copyright repertoire, so we were paying for materials and paying for licences when we weren't actually using those materials. Again, many of the resources we acquire in law libraries across the board are public domain as well. They might be very old cases or they might be legislation that we're licensed to use, by a province or the federal government, for example, in the reproduction of federal law order.

Generally when we acquire resources in print or digitally, our print resources are primarily Canadian books. There is actually very little course pack creation continuing where I work. The course packs that have been used generally contain copies of cases or excerpts of case law. We also have a number of electronic licences, and this is where things are getting challenging for us. Some of the licences that are presented to us actually deny us the ability to lend a few pages to another organization that might be missing that content from a print version of the same resources, for example. We do also have some technological protection measures now embedded in the digital resources themselves that make it a bit more difficult for us to link to those.

Generally speaking, the University of Victoria uses systems that are similar to those at UBC in any case, which I can speak personally to, in that we use an e-reserve system. Our copyright librarian does a road show like the one you're doing. She goes to different faculties and gives educational sessions periodically, and also produces written materials and guidelines. Periodically there will also be random audits of the learning management system to ensure that what is posted there matches what's in the e-reserve system and meets the fair dealing guidelines that we have published.

Mr. Majid Jowhari: I think I'm out of time.

The Chair: Yes, you are way out of time.

Mr. Majid Jowhari: Okay, I'll come back. I have another question.

The Chair: You'll have more time to get back to her.

We're going to move to Mr. Lloyd.

You have seven minutes.

Mr. Dane Lloyd (Sturgeon River—Parkland, CPC): Thank you.

Thank you, everyone, for coming today, and for your excellent presentations.

My first question will be for you, Ms. Middlemass.

Ms. Christine Middlemass: Could I invite our copyright expert, Donald Taylor, to the table?

Mr. Dane Lloyd: Absolutely.

Ms. Christine Middlemass: I don't want to get myself into trouble.

The Chair: Just for the record, please state your name and your position.

Mr. Donald Taylor (Copyright Representative, British Columbia Library Association): I'm Donald Taylor. I am the Copyright Representative for the British Columbia Library Association.

Mr. Dane Lloyd: My question is for either Mr. Taylor or Ms. Middlemass.

What is your experience with TPMs at the level of your institution? How do you interact with TPMs? Can you give us some examples of TPMs in your field?

Mr. Donald Taylor: In libraries, the classic version of TPMs would be electronic books. Unlike journals, most electronic books come with some type of technological protection measure, which in some cases prevents any printing or downloading entirely, so you can't exercise any fair dealing rights whatsoever, and you cannot send a chapter on interlibrary loan. You can't do anything with it; it's just completely locked down. They go from that to limiting printing or downloading to 1% or 5%.

Mr. Dane Lloyd: They allow you to print 1% or 5%?

Mr. Donald Taylor: It would depend on who the provider of the content is.

Mr. Dane Lloyd: But it's not fixed so that you can't print at all?

Mr. Donald Taylor: In some cases you can't print at all; you can't download at all; you can't do anything.

Mr. Dane Lloyd: Are there any other cases?

Mr. Donald Taylor: It certainly also will mean we have some databases of content that, again, has the same kind of restrictions. It's quite typical with standards organizations that they will just lock it down super tight.

• (1500)

Mr. Dane Lloyd: One question has been brought up consistently, generally by the libraries. They would like the ability to override contracts if the reason they want to override the contracts is covered under fair use. Why can't it just be negotiated into the contracts in the first place that fair use be respected? Why do you believe the government should give you the power to override a contract? The reason we have contracts, as you know, is to be in agreement, to have stability, to be a standard. If the government introduces that you can override a contract, that lowers market standards, and it creates uncertainty, which is what the government does not want to create.

Can you maybe tell me why you can't just do that at the beginning and make a deal in the contract? Why does there have to be a government power to override?

Mr. Donald Taylor: One part of it is that we believe, for example, fair dealing is in the Copyright Act because the government deemed it to be good public policy. To have a licence for information resources that obviated that fair dealing right completely would be counter to good public policy.

Also, there is a bargaining imbalance between libraries and vendors. Many times a vendor will just say, "Take it or leave it", and the poor library is in a situation in which community users desperately want that resource. So eventually you just say, "Fine, we'll take whatever it is you're giving us." Even though we might be spending millions of dollars per year on resources, the organization we are negotiating with has many times that, and they have all kinds of buyers. So there is certainly a market—

Mr. Dane Lloyd: So the contractors aren't willing to give you—

Mr. Donald Taylor: That's what I mean.

Certainly, the first step you try is to negotiate it.

Mr. Dane Lloyd: Yes.

Mr. Donald Taylor: You always ask, "Hey, could we please put in a clause that says nothing in this licence overrides the Canadian Copyright Act?"

Mr. Dane Lloyd: Thank you. I appreciate that insight.

My next question is for UBC and Madam Parker.

If you are moving to digital content—and this seems to be the consensus across the board, that digital is the way you're moving, as are transactional licences—this may seem like a silly question, but why is the protection of education under fair use important, if you're moving to digital content and away from print? If we took education or clarified education, why is that a problem for you, if you're already moving away and into other fields?

Ms. Susan Parker: I don't know that it's necessarily a problem. I think that it's an insurance so that something like what was just described doesn't become more normative in licensing.

Right now fair dealing helps us negotiate licences that allow us to do certain things with content. We put them into our course reserve systems that are walled off so that only students can use them for a time, and I think that's a really important tool. Otherwise, if you put the educational system of a university out into the marketplace with everyone else, the costs will also rise.

The market right now, I think, is tempered a bit. Even though we're spending a great deal on licensing material, it's nothing compared with what might happen should everybody be treated the same. I think maybe that's a carve-out we would like because it would be beneficial, but I think it also is a balancing act. I think the whole thing is a balancing act that publishers and libraries try to maintain.

Mr. Dane Lloyd: I think there is consensus across the board that the inclusion of education has significantly reduced the costs for universities, which could be a public policy good, depending on your perspective on this issue.

What would be your comment on Mr. Lorimer's very interesting suggestion that we redefine education as an individual right? If professors want to access copyrighted material, that's fine. If students want to access copyrighted material under fair use, that's fine. But it would be limited so that an institution couldn't mass-produce materials for educational purposes. What would be your comment on that?

Ms. Susan Parker: It would depend, for me at least, on how that would be managed. Many of our students aren't necessarily capable of paying any access rights that they might have to negotiate.

Mr. Dane Lloyd: Presumably they wouldn't have to pay, though, because they would be covered as an individual under fair use.

Ms. Susan Parker: Yes.

Mr. Dane Lloyd: It would be that as an institution, you couldn't mass-produce documents. What would be your comment on that?

Ms. Susan Parker: I think that would probably put a very different spin on it compared to what it is now.

In the United States more and more people are talking about this. Every time you touch it, there's a question about fair use. I think there are going to be more and more different opinions about what that is, and more and more conflict. Instead of an educational institution trying to manage it according to our understanding and in a consistent way, now you will have every actor individually in the institution trying to do so.

•(1505)

Mr. Dane Lloyd: That's interesting.

Thank you.

The Chair: Mr. Sheehan, you have seven minutes.

Mr. Terry Sheehan: Thank you very much, again, for the thought-provoking discussion.

I'm going back to Kim.

You pointed to some very specific things for change, which is good, and we've recorded those. I'm trying to wrap my head around the difference between the law library that you're involved with, your association, and, let's say, the B.C. Library Association. How are you different? What specifically in the copyright legislation is different, from your point of view, from what it is for a regular library?

Ms. Kim Nayyer: Many of our libraries would be libraries as defined in the Copyright Act, but I think some of them would not be. For example, large law firms and small law firms have libraries. They're not able to take advantage of the library provisions in the act, because I don't think they meet the definition of not-for-profit organizations, in most cases. Again, the range of membership is very broad, from very small law firms, to middle-sized law associations or law societies, to very large law firms, to university law libraries, and the interests can really vary among them.

One thing we always bear in mind is that we have quite a positive and constructive relationship with our publishers. Again, some of our members are publishers, and many of our law faculty and lawyers across the country are authors who publish works with those publishers. We always have to bear in mind our own organization's interests. It's quite a balance.

As far as interests are concerned, was your question about how our libraries interact with copyright?

Mr. Terry Sheehan: It was about the difference between how you would see copyright and how a regular library or library association would. You went down that path a bit, so it was good.

We've heard different witnesses advocate for the elimination of crown copyright. Do you agree with this recommendation, and if so, why or why not?

Ms. Kim Nayyer: I don't have a strong view that crown copyright should be eliminated. I have not investigated it that much myself, but I have had conversations with other law librarians who are a lot more familiar with crown copyright than I am, and they assert that there is good reason for maintaining crown copyright over certain subjects. However, I do think crown copyright over primary law, and particularly case law, is not helpful in furthering the work we can do in Canada.

One example is CanLII, the legal information provider. It is able to make case law and legislation available to all Canadians for free, but it has to rely on agreements with courts. I can't supply it with all my books and say to go ahead and digitize them and take out the proprietary content from the publisher, because that's not seen as permissible right now.

There's so much more we can do. I think it's really in the interest of the country as a whole to see that part of crown copyright no longer included. It enables us to keep that information public and open, as opposed to it being controlled by publishers that may have deep pockets and large international connections, and to have the ability to go further with digital content to create more resources and tools. We don't want to tie ourselves to the for-profit international industry, when we could have the ability to create wonderful things locally in Canada with open access to the raw data that forms public law.

• (1510)

Mr. Terry Sheehan: I had a question about CanLII, and you've talked about that. You have a positive opinion of it, then.

Ms. Kim Nayyer: Do you mean as far as crown copyright itself is concerned?

Mr. Terry Sheehan: I mean in general. That's a free online legal reporter, right?

Ms. Kim Nayyer: Yes. I have a positive opinion of CanLII.

Mr. Terry Sheehan: Okay.

Rowland, thank you for your testimony. I'm just trying to pull out specifics about the copyright legislation as it is and how it has changed. This is a statutory review, which happens every five years, so we're listening. Do you have a top priority to change within that copyright law, or do you feel it's okay as is?

Dr. Rowland Lorimer: No, we don't feel it's okay as is. Specifically, I made the point about educational institutions taking the education fair dealing right as an individual right for readers and basically making the material available again. They're republishing it inside course management systems. We think that goes way beyond what the act intended, and we think it is absolutely critical to change.

Mr. Terry Sheehan: It's that specific piece. That's what we heard.

Dr. Rowland Lorimer: Yes.

Mr. Terry Sheehan: Susan, I'll ask you the same question. What is your top priority?

Ms. Susan Parker: The Supreme Court of Canada decisions and Bill C-11, the Copyright Modernization Act, improved things for the

educational sector all over. It says that teachers are there to facilitate students' research and private study. The teachers' purpose in providing copies to students is to enable them to have the material they need. The Supreme Court characterizes teachers as sharing this symbiotic purpose with the student or the user who engages in private study, so it's really not an individual act all the time. On the basis of that, the Supreme Court has said that the fair dealing exception lets teachers make copies. Again, it's based on that symbiotic relationship in the act that happens within education, which is different from an act that happens when an individual person interacts with materials.

I would say that my priority is probably to make sure that we don't change the law so that educational institutions are beholden to a third party to pay certain fees automatically.

Mr. Terry Sheehan: Is that it for time? Somebody will probably ask the last presenter.

The Chair: Thank you.

We're going to Mr. Jeneroux.

You have seven minutes, unless you want to give him your time.

Mr. Matt Jeneroux: I do not, Mr. Chair.

Let's go back to the questions I was asking earlier. Mr. Bell was at the table. I don't know if he wants to return or not. I'll pose the questions to you, Ms. Parker, for the time being.

You mentioned that you're paying Access Copyright. The question was how you are paying Access Copyright, directly or indirectly. You said that you are paying Access Copyright for course packs.

Ms. Susan Parker: We're paying Access Copyright when it's appropriate, when the material requested for a course pack comes from material that we need to negotiate payment for. In other words, if a faculty member is creating a course pack that includes a printed work or a chapter or more from a printed work that requires copyright permission, that's when we would pay Access Copyright.

However, as others have mentioned, there are materials that the Access Copyright licence doesn't cover. The whole reason course packs are disappearing is that we have licences for digital material that allow us to include them in the reserve system so that we're not creating as many course packs. Fewer and fewer people are even asking for course packs or creating them. As Allan Bell mentioned earlier, students really don't want them, either.

Mr. Matt Jeneroux: In other words, only certain material is available that Access Copyright has and that you would have to pay Access Copyright for, and that's what you're doing.

Ms. Susan Parker: Right. That's what I'm trying to say. Thank you.

Mr. Matt Jeneroux: We've heard from other universities that they don't pay Access Copyright at all. They have opted out of the licence, and that's it, essentially.

•(1515)

Ms. Susan Parker: Well, it depends on the copyright holder. We try when we can. As Mr. Bell explained, we have a system and a number of staff devoted solely to the purpose of trying to find out who owns the copyright, and we'll negotiate either a permission or a payment, depending. That may go directly to the copyright holder or to Access Copyright. We haven't stopped dealing with Access Copyright, to my knowledge.

Mr. Matt Jeneroux: Mr. Bell said that you opted out in 2011. However, you still have a relationship. What did you opt out of in 2011, then?

Mr. Allan Bell: We opted out of the blanket licence.

Mr. Matt Jeneroux: However, you still have this relationship.

Mr. Allan Bell: What we end up doing is using our licences in the course packs or in the e-reserve system. For anything we have to transaction license, we have a number of options, including the CCC in the United States. In the case of course packs, it's convenient to do it in the context of Access Copyright.

Mr. Matt Jeneroux: Is that because you can get it only from Access Copyright?

Mr. Allan Bell: It's convenient to get that licence from Access Copyright, yes.

Mr. Matt Jeneroux: You said that the tariffs were essentially the reason that you opted out of the collective licence. Are these more expensive? Do you moan and groan when you have to go to Access Copyright to get these things? What is the decision on that?

Mr. Allan Bell: Do you mean on how we actually do course packs, or are you talking more about the blanket licence?

Mr. Matt Jeneroux: I mean how you do course packs. I guess your dealings with Access Copyright are what I'm trying to get to the bottom of.

Mr. Allan Bell: Essentially, it's what I just said. We have licences that allow us to put in things in the context of course packs, and then we have a number of options, including fair dealing, to make the course packs cheaper for students. In the case where we do need a transactional licence, we have an option for where we get those licences, and one of those options is still Access Copyright.

Is that clear?

Mr. Matt Jeneroux: It's getting a little more clear. I apologize. We're trying to figure this out as we go.

What would be the regularity of this? Is it kind of once every five years that you're dealing with Access Copyright?

Mr. Allan Bell: I'm not sure about that. I would need to go to the bookstore data. I can do that with your analyst to get some more there.

Mr. Matt Jeneroux: Okay. Sure.

I do want to move on quickly to a couple of other issues, if we could.

We're missing our good friend from the New Democratic Party, Brian Masse. He asks everybody about their dealings with the Copyright Board. I would be remiss if I didn't take the opportunity here in British Columbia to ask that question.

We'll go quickly around the table, maybe starting with you, Ms. Middlemass. What are your thoughts on the Copyright Board? I think we'll start with Mr. Lorimer first, then, if that's okay.

Ms. Christine Middlemass: Sure.

Dr. Rowland Lorimer: Our dealings with the Copyright Board have been very limited, but we believe it makes good judgments and those judgments should be respected.

Mr. Matt Jeneroux: Ms. Nayyer.

Ms. Kim Nayyer: I don't have any dealings with the Copyright Board to report. I have heard reports from others who have interacted with or had proceedings before the Copyright Board that processes might take a long time, but I personally don't have anything to say on behalf of CALL or the University of Victoria.

Mr. Matt Jeneroux: Excellent.

Mr. Taylor.

Mr. Donald Taylor: There are two areas of the Copyright Board that impact libraries. One is the speed of tariff decisions, which is quite slow at the Copyright Board. We would like to see that sped up. If it can't be sped up, then at least have it be non-retroactive so that when the tariff is approved it becomes effective. The other issue would just be to expedite the non-locatable copyright owner regime. That's a pretty slow and cumbersome process.

Mr. Matt Jeneroux: Ms. Parker.

Ms. Susan Parker: It's similar for us too. We don't really have direct dealings with the Copyright Board that I am aware of, but I would echo what was just said down at the end of the table.

Mr. Matt Jeneroux: I have about 30 seconds.

Ms. Parker, I'm sorry to be picking on you so much with my questions today. You made one comment in your opening statement about extending the life plus 50 years. What would that cover? Right now we see life plus 70 years only with sound recordings. What would be the scope of the life plus 70 in your field?

•(1520)

Ms. Susan Parker: I'm sorry. I'm not following. What is the question?

Mr. Matt Jeneroux: What would the scope of life plus 70 cover in yours? We only see life plus 70 right now in the music industry with sound recordings.

Ms. Susan Parker: My understanding is that's the length of the copyright, life plus 50.

Mr. Matt Jeneroux: Yes, but you said in your opening comments that you'd like to extend that.

Ms. Susan Parker: No, it's the opposite. I would not.

Mr. Matt Jeneroux: Okay. I misunderstood you. Where would you like it to go, then?

Ms. Susan Parker: It's fine as it is. I wouldn't extend it. I don't have a recommendation for reducing it. I think it is what it is.

Mr. Matt Jeneroux: It's interesting that you put it in your opening comments then.

Ms. Susan Parker: Well, what I'm saying in my opening comments is that I do not wish for it to extend to 70 years.

Mr. Matt Jeneroux: Okay. That's fair. Thank you.

The Chair: Mr. Jowhari, we're back to you. You have about seven minutes.

Mr. Majid Jowhari: Thank you, Mr. Chair.

I'm going to go across the panel. I'd like to get your feedback on what we've heard from content creators. What they have consistently told us is that their revenue keeps going down year after year, despite the fact that they continue to create the content. Without the content, we wouldn't be in the position we are. Also, some of the smaller publishers are saying that their revenue is going down.

Yet we see that the universities are spending a large amount of money. In your case about \$5 million over, I think, 15 years, and that has increased. We also heard from some of them that the reason is that large international distributors are charging a significant amount of money.

Can you give me your thoughts on how we can find that balance? Everyone is also saying that without creators of the content, we wouldn't be here. We want to protect them, and yet we want to make sure there is access to good-quality information, because we want to foster growth and innovation. Yet we hear from the authors on the open mike, and what they say is heart-wrenching.

Give me your thoughts. How would you approach it if you were in our shoes?

Ms. Susan Parker: Because I deal in an academic institution and most of the content that we're talking about is academic in nature that's requested and required by our faculty and researchers—that's also what they feed into—there's a great bit of dynamism right now among academics who publish to try to remake their own system of scholarly communication to basically create in an open access fashion ways that they can disseminate their research that don't require a paywall. It's challenging because I don't care who you are, if you're publishing a journal in whatever format, there's a cost to it.

These discussions are not by any means complete, but there are a lot of different efforts that are afloat, and I think that's the most important thing, to keep trying different things, for scholars and other creators to try different things, but for authors of literary works, how many can we purchase? I think that's a really interesting question for us. We have to balance a budget where we try to prioritize, in our case, purchasing British Columbia authors, purchasing indigenous authors, helping them find a platform for their works. When we catalogue something that we've purchased, everyone around the world knows that it exists. I think that those kinds of megaphones that libraries provide are helpful.

I think there's a lot that creators have to do in order to figure out the best mechanism of distributing things.

Mr. Majid Jowhari: It's going back to the creators again.

Ms. Susan Parker: I think that creators have some power. I know that's true in the academy.

Mr. Majid Jowhari: Ms. Nayyer.

Ms. Kim Nayyer: I think it's fair for me to say that across sectors among law libraries budgets are decreasing and there's less funding available to purchase in particular packaged resources or digital resources or licences or continuing resources, which are very common in law, so books that are supplemented. We pay annually for additional supplements to the same book.

What I can say is that there is also, in my personal experience, definitely an increase in monograph purchases. One outcome at the University of Victoria of our exit from Access Copyright is that we tend to proceed when we reproduce materials by either fair dealing or permissions—the permission may be associated with a fee or it may not be—or the library often orders extra copies, purchases extra copies of the books. Law books are very expensive and that is one reason that we tend not to require students to purchase them. However, just this past term, for the first time ever, I required all my students to purchase a book on legal writing because it's an excellent book and I knew that I would want to assign more readings than fair dealing would allow for that book. Again, I worked out a really good arrangement with the publisher for a reasonable cost for the students.

Generally speaking, I'm not sure if it's the case for other academic institutions, but our monograph budget is not going down, and we're trying to get it to go up. The problem is the pressures from the larger academic packages that bring our commitments to those to a greater ratio or greater percentage of our acquisitions budget. A similar situation exists in law society libraries and legal firm libraries where many of the large subscription products are simply not purchased in print anymore because they're too expensive.

• (1525)

Mr. Majid Jowhari: Mr. Lorimer, I'm really interested to hear your perspective [*Inaudible—Editor*] publication from an open access, one in print and—

Dr. Rowland Lorimer: —the rest of them. Yes, for sure.

The Canadian Association of Learned Journals has been working for over 10 years to try to get the libraries to understand that Canadian publishing—journal publishing and monograph publishing—is fundamentally different from international publishing in science, technology, medicine, and engineering. We are primarily devoted to dissemination of material, communication of knowledge amongst academics, and so on.

There are a number of proposals by international committees of libraries saying, “Why don't you work with us? We are responsible citizens, etc.” At many of the meetings I go to since all this has happened, we get into this complaint about how the libraries are victims because they're so much smaller than these international organizations. It's true. But we are sitting there and we have the same relationship to libraries that they have to international publishers. Who gets killed in a situation where copyright doesn't work and if open access goes too far? It's Canadian publishers reporting on Canadian research and publishing Canadian authors.

Last year on July 17, we put forward a proposal called the journal impact and innovation fund. We took it to the libraries and said, “We would like to work with you and effectively we’d like to get double the amount of subsidies and purchases that we get and we will help you solve the problem of paying vast bills for retrieving Canadian research from international publishers.”

We didn’t get anywhere.

Mr. Majid Jowhari: Could Ms. Middlemass answer the question?

The Chair: Ms. Middlemass, could you give a very brief response?

Ms. Christine Middlemass: In our original remarks, we identified recent information from Statistics Canada about how Canadian publishers had reported a profit margin of 10.2% in 2016. I would also just like to point out that within the Lower Mainland in the libraries I am familiar with, there have been recent programs to encourage self-published local authors who often are really completely unfamiliar with how to even really sell their works. We’ve developed programs and are actually working with authors and some vendors and some publishers to help them get their works to market and into our libraries, public libraries. We are acting on the ground in some of these areas in a way to really help authors.

Don, do you have...?

• (1530)

The Chair: On that note, I want to thank our panel for coming in today. There’s been a lot of great information. You’ve seen me leaning over to these guys and asking them whether this is good stuff, and they’re saying, “Yes, it’s great stuff.”

I want to thank everybody for coming today. We’re going to suspend until four o’clock, when we will resume with our second panel.

Thank you very much for coming and participating.

• _____ (Pause) _____

• (1605)

The Chair: Welcome back, as we continue our study of the five-year statutory review of copyright.

You are the last panel of the day for us. We started in Halifax on Monday, went to Montreal on Tuesday, Toronto on Wednesday, Winnipeg yesterday, and today we are here with our second panel.

First of all, I want to thank our panellists for coming in today. We’ve learned a lot, and we continue to learn. It’s like an onion. Every time we think we know something, we peel a layer, and something else pops up. A lot of the questions that you’ll be asked today are meant to probe, to dig deep, and to try to get a clearer understanding of copyright legislation.

As we start, you’ll each have five to seven minutes to make your presentation. After that, we’ll go into our questions.

From the Association of Book Publishers of British Columbia, we have Kevin Williams, Past President and Publisher of Talonbooks. As individuals, we have Jerry Thompson, Author and Journalist;

Maya Medeiros, Lawyer, Norton Rose Fulbright Canada; and Carellin Brooks, Author, and university and college instructor.

Am I pronouncing your name right, Carellin?

• (1610)

Ms. Carellin Brooks (Author, university and college instructor, As an Individual): No, it’s actually Carellin.

The Chair: My apologies, Carellin. Thank you very much for correcting me.

We’re going to start with Mr. Williams. You have up to seven minutes.

Mr. Kevin Williams (Past President and Publisher, Talonbooks, Association of Books Publishers of British Columbia): I’d like to think that we’re going to be your most vivacious panel of the day. That will help you out.

As mentioned, I am the proprietor, president, and publisher of Talonbooks, one of Canada’s oldest independent literary presses. We celebrated our 50th anniversary in book publishing last year. We’ve always been independently owned. This is my 42nd year in the book trade. I spent 10 years as a retailer. I spent 21 years as the manager, executive, and partner of a distribution/publisher firm called Raincoast Books, which is one of Canada’s largest distributors in town.

In 2007 my wife and I bought Talonbooks from the previous owners. For the last 11 years, I have been an independent literary publisher, publishing works of drama, poetry, books in translation from Quebec literature, indigenous studies, and social issues. I also served for a few years on the Access Copyright board. I’ve been on the Association of Book Publishers of British Columbia board for 12 years. So I have had a lot of opportunity to become familiar with the issues.

The issue from the point of view of independent Canadian publishers and from the point of view of Canadian authors is that our works are being systematically copied and used in educational settings, both at the K-to-12 and university levels, for commercial purposes. They are being used for course packs and for delivery of what would technically be textbook material. I know that people like to interpret the current Copyright Act and the fair use provision as meaning that they are free to copy our works and use them for course packs and in these large-use situations, but fair use implies that there’s no commercial damage suffered and that there’s no use in terms of commercial purposes. But that is exactly what’s going on.

To our point of view, the people who least can afford it in the whole chain of endeavour are the ones who are being asked to sacrifice. They are basically being told that the university and teachers and everybody who works in the system, the infrastructure, the administration, should all be paid and should get benefits. The people who don’t have benefits, and whose salaries are on average about \$40,000 a year, are the ones who therefore should sacrifice their hard work. My contention is that in the long run, you’re crushing the spirit of Canadian publishers and creators. We will gradually create a situation where we no longer have the extremely high level of authors and independent publishing that Canada enjoys today, whose works are known around the world and around the country for being among the very best.

The thing that's unique about Talonbooks, and that perhaps goes against some of the comments you've heard today, is that we're an independent literary press, where 65% to 70% of our sales are academic or school course adoptions. Our literature and our books bring to light Canadian stories by indigenous authors, by diverse authors, by authors from the margins of the community, and by some of Canada's most prestigious poets. They are used throughout academia. It's the same with our drama. All the great plays are used in academic settings. That's where most of our income comes from.

People ask, "What are the numbers?" Well, our average sales a year are about \$400,000. Our income from Access Copyright prior to the change to the Copyright Act averaged \$18,500 a year. Our income over the last two years has been \$3,700 a year and it's dropping. It's obviously a significant decline. Now, \$18,500 is about 4.6% of our sales, so it's a substantial number of sales, but licence sales are basically pure margin when they arrive. As \$18,500 represents 9.25% of our gross margin, or about 10% of our gross margin, we would have to generate another \$40,000 to \$45,000 in sales to replace that.

Our sales have been relatively steady. We've maintained anywhere between \$330,000 to \$400,000 a year ever since, say, 2005, all through the difficult downturns, the advent of e-books, and all sorts of other stuff. Basically, trying to increase sales against the downward pressures of markets is extremely difficult. The overall book market in North America is not shrinking or gaining. It's the same. If anybody increases sales, you have to take market share from other people.

I think we've been somewhat successful taking market share from other people, but I can tell you here and now that there is absolutely no way to replace \$20,000 a year, or 10% of our gross margin, on an ongoing basis, out on the open marketplace. That's not going to happen.

• (1615)

What does this mean from the point of view of the authors? For every cent we get, the author gets a cent. Our authors have also foregone the \$20,000 a year in income from Access Copyright. For example, I was talking to a magazine writer today, and she said, "Be sure to tell them how important the cheque from Access Copyright has been to me every year as a magazine writer, being a crucial part of my magazine income and often enabling me to produce feature articles, where there is a long period of play before we are paid."

First of all, I'd like to say that the collective licensing process, I think, is recognized as being the easiest one. I think the York case pointed out that the systematic copying of 600 million or 700 million copies a year is anything but fair use. In fact, probably the best way to deal with that is through a universal licence. I definitely support that point of view.

I go to academic conferences all the time, and the profs there all tell me that they use our stuff all the time. I know how much of our materials were being used before, and if anything, Talon is a stronger publisher today than it was over the last few years, with best sellers and a few indigenous books that have won numerous prizes. We have a Griffin Poetry Prize. We have a Governor General's Award winner in drama. We have another Griffin Poetry Prize winner, an indigenous author. We have Mercedes Eng, from a Chinese-

Canadian background, who just won the Dorothy Livesay Poetry Prize. We have a book by another indigenous author, who won the Lambda award, and we have another indigenous author whose book was shortlisted for the B.C. Book Prize.

None of these books comes without the production of intellectual capital on the part of the author and the very long value-added chain publishers go through. I know that all our works are being well used in greater quantities than they were used before. I have not received a single request for permission for use from the University of British Columbia since the change to the Copyright Act. I have not received a single permission request from the University of Victoria, and I could go through a litany of just about every university in the country. The only requests I have received to use our materials are from the people who used to request them before: the University of Guelph and a couple of others, four of five of them. The ones we got before the act changed are the same ones we get now. I've had nothing, zero, from the rest of them.

What have I been told? I've been told by professors at the Canadian Association of Theatre Research conference that it's very common for them to sit down in a classroom and for the whole classroom to check out our e-book from the library, and everyone can use that for a course pack. The fact is, our licence to the library never included the right for them to be doing that. There is no enforcement; there is no prevention of that.

I asked to present a picture today that we were tweeted on social media, but was not given leave to, of a high school class reading one of our most successful indigenous authors, Drew Hayden Taylor. His works are used all the time. The classroom is proudly reading a play called *Only Drunks and Children Tell the Truth*, and you can see one person in the classroom holding a copy of the book that's been cut, and every single other person in that class is reading a photocopy.

They'll say that it's not up to them to enforce people copying whole works, but they are copying whole works in the library, so we need some kind of compensation to at least offset this wholesale adaptation of our materials and free use.

The royalty on one book to an author is \$1.69. Basically, we have 20 or 30 books in that classroom, and the suggested royalty for K to 12 is \$2.41 per student. Basically, they're suggesting that they pay, on an annual basis, the royalty for one and a half books to make up for the millions of copies they are copying. That may not be an adequate fee, but it's better than paying nothing and saying, "We should be able to copy all these materials for free. Why don't you creators and publishers donate your works to the system?"

I met last year with the Ministry of Education—

The Chair: I'm sorry, I'm going to have to cut you off, because we have to move on. I'm sure we're going to have lots of questions for you.

We're going to go to Mr. Thompson, please. You have up to seven minutes.

Mr. Jerry Thompson (Author and Journalist, As an Individual): Thank you.

I am the author of a book about earthquakes published by HarperCollins. I have written for *Reader's Digest*, *Equinox*, *Vancouver Magazine*, and *The Globe and Mail*. I've made documentaries for CBC, CTV, Global, Discovery, etc. I'm also a member of the Federation of BC Writers, the Writers Guild of Canada, and the Writers' Union of Canada. I didn't realize I would actually have to do that, eating into my time.

My presentation is called "Stealing from Canada's Writers".

When York University published guidelines in 2017 stating that the revised Copyright Act allowed their faculty and staff to copy up to 10% of a book without compensation, including entire chapters, poems, and articles, the Federal Court of Canada said, "no". York's policy was struck down. Yet here we are, millions of stolen pages later, still fighting the fight, and still paying lawyers' fees. A cynic might think Canada's big universities and school boards are trying to bleed us writers dry.

The illegal copying of works created by Canadian writers is only the latest twist in the ongoing saga of digital piracy. Rent any DVD movie and you will see a short video warning against the theft of intellectual property. The writing, directing, acting, filming, and editing of a movie involves years of creative work. Illegal copying of the final product is a crime in both the United States and Canada. We've all seen the FBI logo and the caution so many times now that people tend to ignore it, but the tag line is clear: piracy is not a victimless crime.

So why are provincial governments and education administrators behaving like modern-day pirates? Why the attack on Canada's writers?

In British Columbia, the Ministry of Education recently joined Ontario and others in a lawsuit against Access Copyright, the agency that collects the royalties due to Canadian writers and publishers. The issue is the copying of millions of pages of non-fiction books, novels, poetry, and magazine articles for educational purposes under the guise of the fair use concept, which was rejected, shot down, in the case against York. As most of you know, the Copyright Act was reviewed and partially modernized in 2012. Somehow the definition of fair use got muddied or lost in translation.

How much of a book, article, or poem can be copied for free? Well, we obviously don't agree. The lack of clarity that came from the 2012 review fed the appetites of anti-copyright activists, who encouraged university and public school administrators to think that a "new" consensus had been reached. They argued that quick and easy public access to information was more important than intellectual property rights, and that it was more important for cash-starved school systems to get something for free than it was to pay the workers who had created the books and the poems and the articles. The argument is and always was bogus. It was the same empty-minded, moral sludge used previously to justify the wholesale downloading and theft of music and movies. Digital technology made it too easy to steal. So, what the heck, everybody else is doing it, so school boards and universities might as well get in on the looting, too, eh?

"Information wants to be free" came the cry of the ethically challenged. Yes, sure, free until it's your information that someone

else wants to steal. Creativity is work. Books are the product of work, just like baking bread or building cars. You don't expect to get bread for free. You certainly don't expect to get a car for free. We all pay for the work of a teacher or a professor, so why should anyone expect a writer to work for free? Which brings us back to the current lawsuit. There never was a new consensus about what constitutes fair use. The court ruled clearly against York's libertarian twaddle. Yet for reasons that defy common sense, school administrators across the country chose to ignore that decision. They pounced on the so-called lack of clarity in defining fair use and decided they could stop paying to copy. The Association of Canadian Publishers reports that more than 600 million pages of published works have been copied for free by the education sector since 2013. But—hang on—the ruling against York has not been overturned. It is still the law of the land. Why would any clear-thinking school administrator or provincial government be pressing ahead with yet another lawsuit that uses faulty reasoning to get something for nothing at the expense of some of Canada's poorest-paid workers? It boggles the mind.

• (1620)

A few lucky writers in Canada also have jobs in universities or as school teachers and therefore have a foot in both camps, but most don't. Most writers have no sinecure, no reliable monthly paycheque, no job security, and no benefits. A recent survey of writers nationwide documented that 83% earn \$15,000 or less per year from writing. In other words, writers in Canada earn significantly below the national median. If illegal copying of their work sounds like an unfair labour practice, you're right, it is.

I do realize and sympathize with the fact that years of budget cuts to education have caused schools and universities to look for some way to cut corners, but writers are not in a position to subsidize underfunded schools. You cannot cover a budget shortfall in public education by stealing from writers.

As a writer, my message to this committee is: please help us clarify fair use as quickly as possible. We can't afford to wait for a long, drawn-out deliberation. Canadian writers and publishers have been losing \$30 million a year since 2013. That's a lot of unpaid rent, and unbought groceries, day care, prescription medicines, you name it. Writers are not rich people. This loss of income hurts. Stealing from writers is not fair use. Piracy is not a victimless crime.

• (1625)

The Chair: Thank you very much.

We're going to move to Ms. Medeiros for seven minutes.

Ms. Maya Medeiros (Lawyer, Norton Rose Fulbright Canada, As an Individual): I'm an intellectual property lawyer, and I also studied computer science and math before going to law school, with a focus on artificial intelligence. I'm going to provide an overview of artificial intelligence technologies, and I'll highlight issues that impact copyright in relation to these innovations.

The term "artificial intelligence" is often applied when machines mimic cognitive functions that humans associate with the human mind, such as learning and problem solving. It's a field of computer science that includes something called "machine learning". Machine learning can automate decision-making using programming rules that dynamically update. This involves training the system using large datasets. Supervised learning involves labelling these datasets, such as "cats" and "dogs" for images of cats and dogs. Unsupervised learning involves training data without those sets, and clusters are discovered automatically.

AI learns to think by reading, listening, and viewing data, which can include copyrighted works such as images, video, text, and other data. It's different from typical software because it automates decisions that are not normally in the realm of computers, and then the code adapts or changes over time in response to the learning of this data. This triggers new ethical and legal issues, which is what we as a law firm look at.

One of the issues is that AI systems need to meet certain ethical standards, and those ethical standards often embed rights and values. One issue that comes up from this point is that there is an increase in biased AI systems, and we're trying to discover why these systems are so biased. Consider a very simple example. In 2016, there was an event called Beauty.AI, an international beauty contest judged by an AI system. Six thousand people from more than 100 countries submitted photos to be judged, but the vast majority of the winners were white-skinned. Upon investigation, they realized that the AI system had been trained on hundreds of thousands of images that did not include non-white faces, so the training dataset was not sufficiently diverse.

Other examples relate to human resource tools, credit scoring, as well as policing and public safety. These biases can cause harm and inequality. Responsible AI should maximize benefits instead of these harms.

What does this have to do with copyright law? The AI training datasets can involve copyrighted works such as images, video, text, and data. The training process can involve reproductions of the training data, and these can be temporary reproductions to extract features of the data that can be discarded after the training process. An AI system can rely on the factual nature of the works to understand these patterns. The AI system algorithm is separate from the training data, but the training data may result in an improved or optimized algorithm. It is unclear whether the use of copyrighted works for training an AI system is considered copyright infringement if the author's or copyright owner's permission is not obtained. This uncertainty exists even if the initial training is done for research purposes—an enumerated fair dealing ground—and then the trained system is eventually used for commercial purposes or made available under a licensing arrangement. This uncertainty can limit the data that is used by AI innovators to train the AI system. The quality of the dataset will impact the quality of the resulting trained algorithm.

There's a common saying in computer science: garbage in, garbage out.

There are public or open datasets available, but they may not be made up of the best-quality data. In fact, a number of examples show that the available open datasets under different licensing arrangement actually do result in biased algorithms due to gender inequality in the underlying datasets. An algorithm trained on this sub-optimal data may result in a generated bias.

An AI developer can develop or generate their own large body of training data, but this may not always be feasible if a certain quality or type of data is required. For example, when training a face-recognition algorithm, it's desirable to have a diverse dataset with thousands of images representing different types of people. However, this may be very difficult for a company to generate unless they are a large social media company, for example, collecting a lot of images on a daily basis.

A recent decision also creates additional uncertainty when that machine-generated raw data is a copyrighted work, because human skill and judgment were used to set parameters around creating that data. This creates additional uncertainties about the scope of copyright protections afforded to data and what can be used for training these systems. Further, even temporary reproductions of copyrighted works for technical purposes can be considered copyright infringement, which creates additional uncertainty.

Another issue relating to AI systems and copyrighted works is that they're now starting to generate new works that can be considered literary works, artistic works, and musical works. The role played by a human in the creation of these works will vary, depending on the technology. An example is a system called AIVA, which actually composes classical music and has an album out. It has already released an album and it also has other tracks available.

● (1630)

It's difficult under the current copyright law to clearly define whether these machine-generated works are protectable as copyright works. It also shows that the nature of these technologies is changing. We need to consider how copyright can address these future technologies and uses and resulting works. This uncertainty creates uncertainty around ownership of these works and the commercialization of these works.

The Chair: Thank you very much.

Ms. Brooks, you have up to seven minutes.

Ms. Carellin Brooks: Thank you so much.

My name is Carellin Brooks. I am a writer and a member of the Writers' Union of Canada. I was on the board of the Vancouver Public Library for eight years.

I knew that I wanted to be a writer from the time that I was a very small child. I wanted to contribute to Canadian stories, I guess. I didn't quite think of it that way when I was six years old, but I wanted to do that. When I became an instructor, I also wanted to represent the work of my fellow writers in the classroom. I take pride in introducing students and readers to Canadian writing.

When the 2012 Copyright Act was under consultation, I and other people came and talked to MPs about it. It seems that none of what we said at that time went into the actual act. Before the Copyright Act, we had Access Copyright payments that came to us every year. As other speakers have said, those payments have dropped by half or more. I think one of the other speakers said that 83% of Canadian writers make under \$15,000 a year from their writing. I'm definitely in that category. I just cashed my most recent royalty cheque for my most recent book—this is the book—and it was \$48. The book was also translated into French.

I've worked at universities, including the University of British Columbia and Kwantlen currently. Both of them opted out of paying their Access Copyright fees since the modernization of the Copyright Act in 2012. This puts me in a difficult position as an instructor and as a writer. From surveys that the Writers' Union runs nationally, I know that copyright is one of the top hot-button issues among my writer peers. I feel that if I am providing Canadian content in the classroom in the form of photocopies, I am undercutting them and undermining them. I can't, in good conscience, hand out photocopies of works that I want my students to see. I have to do a weird little workaround where I display it on the board but don't give everyone a copy.

One time, I knew in advance that I was going to teach a course. I contacted some writers I knew and asked them individually for permission to use their work. They said yes. They did not charge me anything for this. However, this isn't really a viable solution for me. University instruction is in some cases itself a bit precarious. Sometimes, depending on where you are on the list, you don't know if you're going to be teaching until a few weeks or even a few days before your courses start. Even if you had the will, then, you just wouldn't have the time to go and individually ask each author if you could use that person's work.

When students tell me that they are going to copy a chapter, I have to put my fingers in my ears and make that little singing "la-la-la" noise, because I don't want to hear it and I don't want to lecture them. I often feel like I am the only person in the setting who cares about this stuff. I talk to my peers, other instructors, and they don't have any consciousness of why it would be an issue to photocopy large amounts of book chapters, articles, and so on and so forth. There is no issue for them in terms of the ethics of that.

The Copyright Act of 2012 has had huge impacts. It has had a huge negative impact on me and on the other writers I know. It has also had a huge impact on our families. I am the sole breadwinner in my household, and there was a time when I would use my Access Copyright cheque to pay for my Christmas. Access Copyright

doesn't do that anymore. So I would love to see some changes to the Copyright Act.

Thank you very much.

● (1635)

The Chair: Thank you very much.

We're going to jump right into questions.

We'll start off with you, Mr. Sheehan. You have seven minutes.

Mr. Terry Sheehan: Thank you very much.

Those were fantastic presentations. I really do appreciate them.

As we undertake this study, we're trying to figure out how to support our creative economy—our authors and other people working in that field. I have friends and family working in that field too, and I know how much work is put into a book. For one young lady I know, from her initial idea to working with the illustrators to finally getting it published, it took four years for her first book. She's travelling around B.C. right now; I don't know where she is.

So I can truly appreciate that. The voices are important. We need to hear Canadian voices and indigenous voices as well. I truly appreciated your presentations. We also want to make sure that it's very strong, so that university and college students are benefiting, and from a number of different testimonies, we've discovered that there are policies in place in some schools and some not. It seems to be quite irregular.

I'll start with you, Jerry. Can you give me a ballpark idea of how much of your revenue has come from copyright over the last five years?

Mr. Jerry Thompson: Unfortunately, I can't give you a number on that. My wife runs the company, so I don't really know.

Mr. Terry Sheehan: No problem.

Mr. Jerry Thompson: I've only collected royalties from this for a couple of years. It took me a while to learn that Access Copyright even existed.

The short answer is that I don't know the answer to that, but I think Ms. Brooks' answer would be the same. I have received a few thousand dollars from them, but I don't really know the number. I'm sort of focusing my message, instead of on the exact dollars, on the morality of it, on the notion of why this system expects me, the guy at the bottom end of the food chain in publishing....

Aren't we asking professors and university administrators to contribute 10% of their income to the greater good of the public education system? When MPs give up part of their income to help finance the deficit in schools, come back and ask me to donate free publishing.

● (1640)

Mr. Terry Sheehan: So you attribute a lot of this to the deficit in the school systems. I heard that over and over again in your testimony.

Mr. Jerry Thompson: Yes. I mean, let's face it, we had a licensing system in place before that was working. People may have disagreed about percentages, but still, it was working to some extent.

Am I right?

He's been at this a lot longer than I have, and has far more background.

From a writer's perspective, I made documentaries for years, for CBC and others, and whenever we wanted to buy somebody's archive footage, my wife and I had to purchase a licence to use that. It was always a licence for a limited time, usually about seven years, and it gave us permission for the commercial use of that footage for those seven years. After that, we didn't have the permission to use their stock footage. Therefore, we also couldn't sell our finished film that contained their stock footage.

It was a situation I understood and agreed with. I knew that those were the rules of the game. You buy a licence and you pay. Why would it be different for writing a book? I don't think it should be.

Mr. Terry Sheehan: That was going to be one of my questions.

Too, Jerry, we had some testimony earlier from the Fédération nationale des communications. You just brought up your journalistic background. They're the ones who advocate for news and media professionals. They presented a number of recommendations to this committee, hoping to support the remuneration of Canadian journalists. These recommendations included the creation of a new category of protected work—journalistic work—as well as the establishment of a collective rights society charged with defending the copyright of journalists and working to ensure fair compensation.

To start, can you provide the committee with a sense of how the remuneration of Canadian journalists has evolved in the last 10 years?

Mr. Jerry Thompson: I don't have details on that, because I worked at CBC in-house or on contract for about 20 years, and then got mad and quit one day. After that, I was an independent filmmaker for another 20 years. My income for the last 20 years has all been mixed up in trying to put together money to make independent documentaries, so there isn't a clear and simple answer to that in my particular case.

For example, as I was explaining earlier, if we went to pitch a film, to make a film, which is equivalent really to writing a book except that it's more expensive, we would get 15% of the budget in a licence fee from a broadcaster. Say CBC says, "Yes, we'll green-light your project", you get 15% from the CBC, and you have to raise 85% from a whole slew of other things, including tax credits and all kinds of stuff like that. Finally, you're the last guy to get paid because you have to pay the subcontractors that you hire, the cameramen, and the musicians who do the soundtrack for it. It's a really convoluted way to make a living, and you basically never do more than break even most of the time.

I had no idea until I dropped out of television and decided I wanted to do this for a living how much worse it is in publishing. I thought television was messed up.

Voices: Oh, oh!

Mr. Terry Sheehan: In general, would you agree with the recommendations that they were trying to put forward with regard to Canadian journalists?

Mr. Jerry Thompson: Absolutely, and it still goes back to the concept of the ethics of the thing. When people say it's too hard to keep track of all of these things—thousands of things get written in magazine articles; things get published; and if it's a hot topic, an instructor might need that on short notice at the university and they would say, "Gee, I can't go through all the rigmarole of paperwork to try to track down who I should be paying for this"—that's bogus. You can track anything with computers now. You can use bar codes to figure out how many times something gets used, whether it's an article, a poem, or a chapter. Every time it gets used, it should be paid for. Why should it be otherwise? None of the rest of the people in this room expect to work for free.

• (1645)

Mr. Terry Sheehan: Thanks.

I'm good.

The Chair: Mr. Lloyd, you have seven minutes.

Mr. Dane Lloyd: Thank you.

Thank you to all the panellists for being here. I really appreciate your testimony.

My first line of questioning is going to be put to Ms. Medeiros.

It's very interesting having you here, because we haven't had anyone talk about AI or new technologies besides just the general digital sphere. It does seem that one of the big problems we've been hearing about on this committee as we've travelled is that the digital age has changed everything in terms of e-books and resources available online, but we haven't had a corresponding rise in technology to protect copyright, so copyright is just being abused with this great technology that we have. It's being misused, but we don't have the technology to protect copyright.

I noted in your background here that you're interested in blockchain technology. Can you maybe comment on the possibilities of blockchain technology being used to protect copyright?

Ms. Maya Medeiros: I can, without getting into specifics, because I am a patent lawyer so I work on a bunch of different things. Blockchain essentially could be a great tool to track usage given the way it's distributed, depending on how one sets the networks. Blockchain can be thought of as just a fancy data structure that can be distributed across a series of different nodes, and those nodes can be controlled by different entities. It's a nice scalable solution, and there's some trust built inherently into this architecture because there's a chain effect essentially, using encryption technology that prevents things from being swapped out. It's supposed to be an authentic trail.

The issue—and it's kind of what Jerry was alluding to—is that if you're using it from an outright management perspective, it's a great way to store a bunch of data about how rights are being used. It can also include technology tools within the block. It doesn't have to be just data. You could actually put a smart contract into a block, which is essentially a piece of code that executes automatically, so if Jerry's book gets used, pay x out to Jerry.

The question, I think, from a technology standpoint is how we can upload that usage information automatically to the blockchain. Just think of it as this fancy data structure with a bunch of different blocks, so if I want to use Jerry's book, how can we facilitate the technology, that usage, so that it can update that information on the blockchain, and it can trigger that contract to pay Jerry automatically? It can eliminate some of the middle people, and might put more money into Jerry's pocket, hopefully, and the automated fashion of that can help eliminate a lot of other—

Mr. Dane Lloyd: It doesn't really seem that viable for print, unless you're scanning the bar code, as he said.

We've been hearing from the universities and the K to 12s that digital is what they're moving towards. Would you say that blockchain technology would be very helpful for the publishing industry and for authors when it comes...?

Ms. Maya Medeiros: If there's an electronic record for that book, and there's a way it facilitates an automatic uploading of usage, if I access an electronic book, that should be automatically recordable in blockchain technology.

Mr. Dane Lloyd: Yes.

I'm going to go on a rant a little bit here. The universities and the K to 12s all have copyright policies. They even have copyright officers, but when we ask consistently how they are enforcing copyright, there's sort of a pause. We've been told consistently that copyright is not being enforced. They do education. If you ask them, they'll say that this is their policy—10%—just like York University. If you ask how they know someone's not doing 20% or 100%, it's sort of just a shrug, that they can't monitor that.

I'm guessing that blockchain seems like the technology that can also come up in a digital age. It would be able to track whenever a university was distributing a copy of something, then as an author, if you wanted legal recourse to sue a university you believed was infringing your copyright, that data would be available for you as evidence in a court case.

Ms. Maya Medeiros: Presumably, if the architecture is set up so that it is an open system, those read privileges exist. That would be something you could definitely engineer.

Mr. Dane Lloyd: I'm not trying to be too biased against the universities and the K to 12s. Can you also comment on how this could be helpful for the K to 12s and universities by giving them the data to track usage? Could it be helpful for the universities from a cost-savings perspective and a legal protection perspective?

Ms. Maya Medeiros: I think from a cost-savings perspective and for legal protection, they would have actual numbers on things. Even from a usage standpoint—as in, “Oh, our students really like this book”—we could track a little bit better and figure out why. Maybe they're reading it outside the classroom. They could actually keep up with book trends a little bit more easily, using it from that end. There are a lot of recommendation technologies. Once you have that data, you can use that. There are discoverability tools. It could broaden the discoverability of books they might not be aware of otherwise.

It's just a better way to track data. I think more data could be used very efficiently for different purposes.

● (1650)

Mr. Dane Lloyd: Another interesting point that's been brought up, mostly by the libraries in their testimony, is that they desire the right in the copyright legislation to be able to circumvent technical protection measures and to be able to override contracts in cases where they believe the use is covered under fair use.

If they're already not monitoring copyright infringement, what sort of consequences would we see if this committee were to recommend, and the government were to implement, legislation allowing the circumvention of TPMs and contract overrides?

Ms. Maya Medeiros: I can't comment on that, specifically. I think if you're allowing overrides of technology protection measures, and those measures were set there to protect intellectual property, that would have a greater impact.

We are seeing a rise in technology to protect intellectual property rights. I work with a company whose CEO is based in Vancouver. She's a fantastic woman. She used to be the legal officer for RIM, or BlackBerry. They're developing a technology that's helping to track 3D rights online. With 3D printers, you can imagine all of this other interesting stuff that's coming up.

In Vancouver, there's another company, called Copyants, which has technology that can crawl the Internet and try to figure out the usage of images.

Mr. Dane Lloyd: I have about 30 seconds left.

How can the government, or we in this copyright review, put force behind these measures? How can we give them teeth so that they'll actually help writers and publishers?

Ms. Maya Medeiros: I think it is to facilitate the standard and the onus of proof, because it is very expensive to show that there has been an infringement. You often need a lawyer—

Mr. Dane Lloyd: That's the onus on the writers right now. They have to show that they're being infringed upon.

Ms. Maya Medeiros: Yes.

Mr. Dane Lloyd: They can't get the evidence, because universities and K to 12s aren't tracking it right now, so it's basically like trying to find a needle in a haystack.

Thank you.

The Chair: Fun stuff.

Ms. Maya Medeiros: I'm taking a very balanced approach, of course.

The Chair: I think you fit in perfectly with this panel. They're totally engaged in your conversation.

Mr. Jowhari, you have seven minutes.

Mr. Majid Jowhari: Thank you.

I want to start with Mr. Williams. You didn't get a chance to finish the last piece of your opening remarks. Since your remarks are being recorded, if you wish, you can use some of that time to finish what you were not allowed to, because you passed the seven minutes.

Mr. Kevin Williams: I was indicating that our works are being copied and used freely digitally, that e-books and stuff are being used without any reference at all to the original licence under which they were sold to the library in order to form course packs, and that we are receiving no compensation for that at the university level. At the high school and K-to-12 levels, the teachers have such an enormous burden to produce their own curricular materials that they're running around copying stuff left and right, and they can't really be expected to be chasing down permissions and trying to deal with that.

That's why the licence through Access Copyright was such a fair thing. They paid one fee per student per year and basically could copy, under the guidelines, as much as they like. We know that maybe they don't follow those guidelines closely, but at least in principle they know that they can go out, generate their course materials, and copy them.

I think the best way to ensure a fair process is that the tariffs set by the Canadian Copyright Board be respected and be paid by the ministries of education and by the universities. The ministries of education and the universities have decided to try to exhaust the resources of authors and publishers and Access Copyright through a prolonged legal struggle and to draw it out and bring as many actions as possible to basically exhaust our resources.

Not only is it not fair, and not only are our works being copied in a systematic and commercial way, but I also regard this as the highest form of bullying. Basically they've taken tactics from the wider marketplace and brought them into the sphere of culture and education, which I consider an inappropriate play.

Mr. Majid Jowhari: Great. Thank you.

We have three authors here, and you've all brought print books and you've also talked about the downward pressure of the digital era. Going forward would you still consider writing print books or writing books and having them published on paper, or will you be moving to digital that, hopefully, with AI and blockchain could be traced and you would be compensated?

Can you comment on that?

Let's start with Ms. Brooks.

•(1655)

Ms. Carellin Brooks: I'm not a big fan of digital, as most people who know me know. I've certainly tried it once because then I never had to do it again. I don't mind if my publisher BookThug is involved in e-books and I'm sure there's an e-book, but I like print. Christina de Castell, the acting chief librarian of the Vancouver Public Library, is in the audience and can tell you a great deal more than I can about the trend.

While e-book use has really gone up enormously, we're talking very small numbers compared to the numbers of print books that people read. People tend to like reading e-books for very specific things like for textbooks, for example, because textbooks are so expensive, or for romance novels, because people who read that genre read a lot, so they need to go through a lot of printed material.

Again, I'm not going to say no, but I would also always want the printed copy.

Mr. Majid Jowhari: Mr. Thompson.

Mr. Jerry Thompson: I have sort of accepted that digital is inevitable whether I like it or not. I can sort of as an environmentalist appreciate the fact that we don't cut as many trees down when we do things digitally. But digital also makes it easier to steal things. The good news is that digital may also make it easier to track the stealing, which sounds good to me.

I have another little anecdote about this business. That is that the music industry, where this stealing started in such a wholesale way, eventually got around piracy by switching their focus to live concerts. You can take a cellphone and try to record a live concert but it's usually just junk. If you really appreciate the artist, the singer, the songwriter, or the band, you're going to pay the money. You're going to go to the concert. There's no way to cheat on that. The artist actually gets paid for it.

Unfortunately, there is no live performance equivalent of writing a 336-page book. Imagine how long it would take me to stand here and read this to you. Don't get me wrong—this book is a potboiler about earthquakes and it's a science mystery of how we didn't understand this problem. It's also the only Canadian version of this story in print so far that explains exactly what the biggest natural disaster in North America is going to be. In a way, I should be happy that people are stealing my book, because it gets the word out to the public.

On the other hand, if my publisher loses money because of the stealing, there will be no incentive to do this again. In fact, if it becomes the trend, why would they publish anything Canadian?

Mr. Majid Jowhari: So you'll continue with print.

Mr. Jerry Thompson: Yes, I will continue with print.

Mr. Kevin Williams: If I publish a book, and I have a room of 50 people who want that book, generally speaking, 40 people will want the print book and 10 people will want the e-book.

I consider my job to be the intermediary between the author and the reader. Obviously, in addition to all the editorial production, marketing, accounting, and shipping work we do, we also try to make sure that people can access the material in the formats they want. We try to publish the books simultaneously in both print and e-book forms.

The e-book market has basically stopped growing and seems to have reached its natural limits. My own perception of it, having published books for the last 10 years and having seen how people consume them, is that, generally, you'll see this kind of breakdown: about 40 people will want the print and about 10 will want the e-book.

Mr. Majid Jowhari: Mr. Chair, how much time do I have?

The Chair: [*Inaudible*]

Mr. Majid Jowhari: Okay, I'll come back to you.

The Chair: Thank you.

Before I move to Mr. Lloyd, I have a question.

Mr. Dane Lloyd: Is this going to take my time?

The Chair: No, it's going to take my time. I'll siphon it off somebody else.

Ms. Medeiros, in the beginning of your presentation you had mentioned AI learning, and that in order for it to learn, if I have this right, it would go online and take images. Does that also apply to text?

•(1700)

Ms. Maya Medeiros: Yes, it can learn from text or video images.

The Chair: For the purpose of this conversation, could it, then, access Mr. Thompson's book?

Ms. Maya Medeiros: It could access that book. Whether the trainee of the system or the owner of the system would do that without their permission probably depends on that person. Those who are being diligent and law abiding would not use that without his permission, because there's an uncertainty right now in the law.

The Chair: So it's programmable. It's not something it would do on its own, go out, like Google, with all the little robots—"Oh, this is a good part of a book, I'll take a chapter out of here" or "I'll take a page out of this book".

I guess what I'm asking is this. Is this going to present even more of a challenge to writers?

Ms. Maya Medeiros: The technology can be set up to crawl along, as you mentioned. Some technologies might be doing that already, crawling the Internet, trying to find whatever they can out there and learn from it.

Whether a company is going to take those documents, make copies, bring them in-house, and train on their own systems depends on the lawful acts of that company. A lot of them will probably refrain from doing that, given the uncertainties in the law right now.

Conceivably, from a technology perspective, that kind of system can be created.

The Chair: Is there any way to track whether that's happening, currently?

Ms. Maya Medeiros: I don't know of a way to track whether that's happening, but there could be systems that are hosting the book. If a system is offering that book, they might notice that a crawler has come in and accessed that book.

The Chair: Assuming that Mr. Thompson has a lock on his book, can the AI program circumvent that lock?

Ms. Maya Medeiros: It conceivably could, if the technology is set up to do that. That would be a violation of the technology protection measure. There are technologies that can circumvent technology protection measures that exist out there. You could combine some technologies.

The Chair: Thank you.

Mr. Lloyd, it's all yours. You have three minutes left.

Mr. Dane Lloyd: The chair and I are kind of nerding out on this issue. I appreciate your commentary, Ms. Medeiros.

One interesting thing that was brought up at a previous committee meeting with some indigenous witnesses was that oral tradition and oral knowledge isn't protected under copyright, because one of the tests is fixation. It must be written.

I'm interested to know if audiobooks are protected under copyright.

Mr. Kevin Williams: Yes, they are.

Mr. Dane Lloyd: How are they, if they're not fixated?

Mr. Kevin Williams: It's a performance of the work, and the recording of the performance becomes a fixation of the work.

Mr. Dane Lloyd: Interesting. Thank you for that, I didn't know. That's good for my knowledge.

This one will be more for Ms. Medeiros again.

I guess I already know the answer to this, but I want to get it on the record. Can artificial intelligence be programmed to deal ethically with copyright?

Ms. Maya Medeiros: It can be programmed to deal ethically with copyright in the event that there is, let's say, an embedded tag thing—do I have permission to copy this work, or not? It could listen to that tag. It's a computer code that would run that. It could be set up that way.

Mr. Dane Lloyd: Thank you for that.

Can AI become a tool for monitoring copyright infringement and copyright enforcement?

Ms. Maya Medeiros: It could in the sense that it can detect patterns and similarities between texts, so it could be used to detect copying, and that would help in the enforcement.

Mr. Dane Lloyd: For example, could an AI system moving through the Internet notice that an institution or an individual was possibly pirating millions of copies, or thousands of copies of pages, and basically flag that to a group like Access Copyright or to the government, for example?

Ms. Maya Medeiros: If it exists in electronic form, it could find that. It might not even need to be AI, but could just be a simpler process. Often in image recognition, there's usually an AI component, so if it was crawling around looking for a similar image and I posted it initially, technology does exist that could find other versions or copies of that image out there.

Mr. Dane Lloyd: Do you think that as part of the government's role, it would be necessary for us to include a recommendation or legislation to force giants such as Google and Facebook to rapidly take down copyright-infringed work on their search engines, or is that already happening?

•(1705)

Ms. Maya Medeiros: It's difficult for me to say because I'm not exactly sure how that would be implemented all the time and given that there's a jurisdictional issue that needs to be addressed. Before the Supreme Court, they already tried to issue an injunction against a technology company. That was a Canadian injunction, and then the U.S. courts had said no, that doesn't apply, so I think there are fundamental jurisdictional issues that need to be addressed, whether it's copyright or whatever other lawful act that's at issue. This was actually relating to copyright infringement of technology, so it is hard to enforce from a jurisdictional standpoint.

Mr. Dane Lloyd: Okay.

Ms. Maya Medeiros: Even if you changed that law, I'd query whether companies that don't reside in this country would have to follow that.

Mr. Dane Lloyd: Print is still such a dominant thing, as we've heard from many witnesses. It seems to me that if I went to my local public library, which I do enjoy doing, and I were to take a book off the shelf, I can take it home and with the advent of home copiers and home scanners, which are quite affordable, nobody's going to stop me from scanning things. It's a little bit unenforceable.

Whom do you think the onus should be on to track that sort of thing, or is it basically just an individual's responsibility to do so themselves?

Ms. Maya Medeiros: It will be very difficult to track that kind of behaviour and to know what's happening in somebody's home. It would be quite difficult. But if that copy were uploaded onto the Internet somewhere, even if it were in image format, not text format, there are OCR, or optical character recognition, technologies that could locate that. So there are tools that could try to monitor it to help facilitate that process, but it would be very difficult to figure out what's happening in people's private homes.

Mr. Dane Lloyd: I agree that it's basically impossible to enforce.

Mr. Williams, from a publisher's perspective, what's your commentary? Are you engaging in any new technology, or how do you try to protect copyright with your business?

Mr. Kevin Williams: We do have some digital rights protection on our PDFs and we rely predominantly on the vendors of ebooks to use the digital rights protection, because we basically sell our books through ebook vendors.

Mr. Dane Lloyd: Who are these vendors?

Mr. Kevin Williams: It's everyone from Amazon to Apple iTunes. There are probably about 30 different ones, and we use a commercial distributor that basically sends the file to all of them. In some ways, the copyright protection is on them.

On the ebooks that we sell off our own site, we have a limited digital protection, and if we send out desk copies to academics for review, we ask them not to copy them.

Basically, if an individual checks a book out of the library and decides to copy it for private use, that's fine.

Mr. Dane Lloyd: So there's no problem with that.

Mr. Kevin Williams: There's no problem with that. They just can't sell that copy or use it for commercial purposes.

Mr. Dane Lloyd: Your problem is with the systematic abuse.

Mr. Kevin Williams: That's right.

I wanted to make one further comment, because I don't think someone's going to ask me this question, and it's on a bit of a thorny issue. Hopefully, I can do it in a minute.

Basically, at Access Copyright they tried to refine the payment of authors and to distribute the revenues fairly by improving the tracking of which works were being copied, because that's obviously an issue. The schools tracked it for awhile, but they asked within the university systems to provide a database of works that were being copied. There was a push-back on the intellectual freedom side of it from the professors, who argue that now they're giving us knowledge of who's using what, and we can use that knowledge for nefarious purposes.

However, I would argue that the publishers and authors are unlikely to ever come anywhere close to using that knowledge for nefarious purposes, and the only people who are likely to use that are the university administrators who already have that knowledge through their blackboard and course management systems.

Mr. Dane Lloyd: Thank you. Mr Chair, I'm going to take this extra time.

What sort of nefarious purposes could you possibly use that information for?

Mr. Kevin Williams: Well, you could try to discriminate politically against somebody who wasn't practising politics to your liking, through the fact that they were adopting certain books and so forth and so on.

That seems to me like almost beyond reasonable to think that authors or publishers whose lives depend on intellectual freedom are going to try to infringe on university professors' rights. The only people who, I think, might be interested in trying to solve problems of political correctness in that sphere are in their own sphere in the university faculty or otherwise. Those people already have that knowledge. I think there's no reason not to keep track of what's being copied and to pay people fairly accordingly.

The Chair: Now your seven minutes are up.

Mr. Dane Lloyd: There you go.

Thank you.

The Chair: She did say seven minutes.

We're going to move to Mr. Sheehan.

You have seven minutes.

Mr. Terry Sheehan: Sure. Thank you very much.

I'm just going to start very quickly with Carellin Brooks.

In your presentation you mentioned that five years ago you had made a presentation or made contributions to this particular review.

Is that correct?

• (1710)

Ms. Carellin Brooks: We went individually and spoke to our MPs.

Mr. Terry Sheehan: Five years ago.

Ms. Carellin Brooks: Yes.

When....

Mr. Terry Sheehan: What did you say then? What were you noticing?

Ms. Carellin Brooks: We said, "This is crap." I mean—sorry—"This is going to torment writers", which it did. "Our salaries are going to plummet", which they did. "Universities are going to take advantage of this", which they did.

It was a prophecy that nobody wanted to hear at the time. No, no, no—it's all going to work out. It's all going to be good. We have to modernize the act. We said this was not the way to do it. They said, "Ah, don't worry about it". We worried. It turns out we worried correctly about our incomes as writers.

Mr. Terry Sheehan: What were your recommendations at the time? Do you recall?

Ms. Carellin Brooks: Don't do this.

Did we present a credible alternative? Hey, we liked what was going on before. We liked the Access Copyright structure in the sense that, yes, it is a pain to count individual pages that people photocopy for individual courses. It's difficult to track.

As I think another speaker said, the universities have copyright offices. If you go to the copyright office and say, "I want to use this work", they say, "Okay. You deal with the copyright." What are you there for? You know.

It was a system that wasn't perfect, but it worked reasonably well some of the time. It's a lot better than what we have now.

Mr. Terry Sheehan: Okay.

Thank you very much for that.

Kevin, has the Association of Book Publishers of British Columbia seen a decline in revenue from copyright in the last five years? I asked Jerry the same question, and he suggested asking you. Do you have some quantitative numbers that you could provide us?

Mr. Kevin Williams: Yes. I mentioned them earlier, but I have them here before me. The best example, of course, is to give you my own numbers. I carefully looked these up for you before I came.

Prior to the Copyright Act we averaged close to \$20,000 a year in copyright income. That was \$18,500. In the last couple of years, it's been below \$3,800 and has been dropping. I think most of the other publishers have experienced a similar decline.

That's a decline of about 400% for us. I also heard it argued that it's not a significant part of an income. I pointed out that it's almost 10% of our gross margins. That's really a significant part of our income.

I heard someone mention earlier today that according to Statistics Canada, the average profitability of publishers in Canada in 2016 was 10.1%. I can tell you that the profitability of independent publishers and literary publishers and not the multinationals—because basically they are skewing in the multinationals there—is between 4% and 5%.

To make a profit margin of 4% or 5% means that if there's the slightest fluctuation in your revenue, you stand to lose money. If you lose money, the independent proprietor basically has to write a cheque. I've been known to write some cheques in my time.

Mr. Terry Sheehan: We've heard from other witnesses, publishers, and authors that there are also other challenges they are facing at the same time. Copyright is one of them mixed in with some others, which makes these very difficult and particularly challenging times.

Mr. Kevin Williams: I can point out a few of them.

For example, as I think I indicated earlier, a lot of our sales are in the university market, so the bookstores have made a real effort to get students to sell back the textbooks. There's a real increase in the number of used textbooks in the university market. There is also a lot of use of whole digital books in the university market, which obviously has nothing to do with copyright and is not particularly

legal, and is taking advantage of those e-book licences, but nobody seems to care. Basically, we have the same number of course adoptions, we sell the same number of books into the university system, but our returns rate has gone from about an average of 18% to an average returns rate now of 40%. Books are returnable. It's a great business. We can sell the books to people, and then they can send them back to us and get full credit. We get to have the expenses twice: once for processing them in and once for processing them out. A significant change in the returns rate, a doubling of the returns rate, is practically enough to bankrupt the publishing industry.

It's been suggested to us that we should get more government funding to replace the legitimate funding that we get from sales and from rights income. I would argue that's not a good idea, because, one, it's not fair; two, it's not a representation of reality; and, three, it doesn't look after the authors in the equation. For the 50¢ of every dollar that we get in rights sales, the authors get 50¢, and for all those books that aren't sold in the universities or come back in returns, the authors don't get any royalties. It's not really an answer on the creator's side to try to say, "Well, don't worry about us abusing the copyright back because we'll slip some money to you through the back door". I don't really think that's an answer to our problem.

• (1715)

Mr. Terry Sheehan: I just have a little bit of time left. You went through many of the books that you have published, including some by indigenous authors. I'm from Sault Ste. Marie, and there's a large indigenous population around there. I have been asking many of the witnesses about this. The feedback from indigenous communities has been that copyright has not worked for them, for a variety of reasons. Dane picked up on one of them, the oral tradition, whether it's talking about their stories or sometimes their sacred stories. We heard some good testimony in Winnipeg. One woman said that you have to go and ask permission of the indigenous community because the ownership in the indigenous community sometimes is collective—sometimes it is a clan, or it could be an individual. What has been your experience working with your indigenous authors and non-indigenous authors writing about indigenous stories?

Mr. Kevin Williams: I really appreciate the chance to address this particular issue.

First of all, in our publishing program we have made a big shift from having a lot of non-indigenous people writing about indigenous subject matter to trying to make more of an effort to engage indigenous people to write about indigenous subject matter. Then there's the complicated issue of people bringing forth the traditional stories, the traditional oral stories from their particular nation.

How is that handled? Publishers in Canada are developing a lot of practices around making sure that either the author or the publisher has gone back and talked to the stakeholders involved in those stories, whether it be the band council, the elders, the particular group of people, or the particular family, because sometimes within the indigenous tribe, stories will be dear to particular families and clans. We go to a lot of trouble now to make sure that trail is traced and those permissions are in place, and that quite possibly the royalties are being paid either to the band or the indigenous elders where the story is being derived from. We will no longer take a story from an indigenous author that is traditional material unless we've made sure they've gone through some process to basically validate why they're able to present that ownership.

Our second vein of attack right now is putting as much effort and study as we can to get more people at the editorial level, whether from an indigenous background or other diverse backgrounds, into the Canadian publishing industry. One good way to make sure indigenous material is treated more respectfully is by having indigenous editors.

The Chair: Thank you very much.

Mr. Lloyd, you have five minutes.

Mr. Dane Lloyd: Thank you so much, Mr. Chair.

This next question is on the experiences you alluded to in your testimony, Ms. Brooks.

As somebody who is both a writer and works within the education system, you see both sides or perspectives and have frustrations with it. Do you think what people are doing with copyright is just innocent, that they're aren't really thinking about it and it's not even in their consciousness right now?

Ms. Carellin Brooks: I think universities, for a variety of reasons, are trying to become more student-centred. We see this with course evaluations. Student course evaluations really have an impact on instructors now, especially instructors who are in more precarious employment. One thing that seems easy to do is to have materials that don't cost students anything. Students complain about the high cost of their education.

Mr. Dane Lloyd: And they blame the professors.

Ms. Carellin Brooks: Well, not exactly, but if they have to go and buy books that are hundreds of dollars, there is a bit of push-back. I think instructors are very aware of that and are aware of that impacting students' satisfaction with the course.

Mr. Dane Lloyd: Maybe they won't sign up for the class, and with that precarious employment, you're risking yourself, basically.

Ms. Carellin Brooks: Yes. The University of British Columbia at one point put out a press release that said they were decreasing student costs by making course packs free. When the Writers' Union of Canada saw this, they wrote them a blistering letter and told them they were doing this on the backs of writers.

The response of the university was not to say, "Gee, maybe we should reconsider our stance on this." It was to go to the chair of the creative writing department at UBC and say, "How dare your peers"—the writers—"take us to task?"

• (1720)

Mr. Dane Lloyd: We had an author in Halifax who was quite unequivocal about this culture of "free". He said that free culture is not sustainable and that free culture will lead to the end of artists and authors in Canada. Can you comment on that?

Ms. Carellin Brooks: I don't know how many writers have told you that they've stopped doing various forms of writing. I used to do short freelance pieces quite a bit. I freelanced for different newspapers and magazines across Canada.

At one point I went to the B.C. magazine awards. I can't tell you how long ago this was. I'm going to say it was around 2000. The guy who was given the lifetime achievement award talked about how the rate has been a dollar a word for feature articles in national magazines for too long. It was a dollar a word when he started 20 years ago and it was still a dollar a word. He said that had to change, because people can't afford to write a feature article for a national magazine for a dollar a word.

A few years later, I was asked to do a cover story for *Vancouver* magazine. I did it, and the editor said to me, "You've done such a great job. You've been so great to work with. I'm going to give you my top rate: 85¢ a word." And it's gone down since then.

So it doesn't really pay. As other panellists have mentioned, at a certain point it's not worth it for writers. When you're trying to broaden the number of stories and voices in Canadian culture, which has so many spinoff economic effects that are good, you end up narrowing it to people who can afford to subsidize that themselves.

Mr. Dane Lloyd: When I walk into the local Chapters or something like that, there's a very small Canada section. I know that Chapters tries their best to have Canadian or local authors up there. I don't know if there are more, but it seems to me there's a real shortage of authentic Canadian authors who are publishing. It seems that when you go into bookstores, it's just all American works and European works.

With this current status quo, is there a real threat to indigenous Canadian writing? I don't mean indigenous in just the aboriginal sense, but indigenous to Canada.

Ms. Carellin Brooks: I think it's really not common knowledge. A few years ago, I served on a B.C. awards jury. I think our awards were either \$6,000 or \$12,000. It was \$6,000 for a less established writer and \$12,000 for a more established writer. I was shocked at the number of big names in Canadian writing, people whose names you would recognize if I said them, who were still applying for these \$12,000 awards.

People are on very narrow margins. Every penny really does count. That goes for the publishers as well, as Mr. Williams has said.

Mr. Dane Lloyd: Thank you.

The Chair: Thank you very much.

Mr. Jowhari, you have the final five minutes.

Mr. Majid Jowhari: Thank you, Mr. Chair.

Maya, you talked about AI and developing logic and using training datasets to make sure that the logic is going to do what it's intended to do. This training data will come from various sources. First, if it's in a digital format—whether it's content that's been created by an author or whether it's an image—is this now subject or not subject to the Copyright Act?

Ms. Maya Medeiros: If the data is a book, like a digital copy of the book, it would be subject to copyright. It's just the digital format of a literary work.

Mr. Majid Jowhari: Even if it's just used for making sure that the logic works, once the logic is completed and it's launched, does it continue reaching out to various sources to accumulate more and learn more? There's an initial dataset that is used and then there's an ongoing dataset. Right now, both of those datasets, based on the Copyright Act, are subject to copyright fees.

• (1725)

Ms. Maya Medeiros: There is uncertainty as to whether the underlying work itself... If it is a digital copy of a book, it would be a literary work regardless of what stage. Think of natural language processing, for example. You would want to teach a system how to understand a sentence and context and meaning and sentiment. You would probably want to give it a lot of different books and a lot of different texts to figure that out. That would all be part of the training process, so when you fed it something in real time, and not in the training stage, it could figure out the context of that sentence and the meaning of that sentence.

In the training process, it's actually unclear, under the current act, whether that activity would be an infringement of copyright or not. There's uncertainty there, so that often prohibits using works that a company might want to use for that training process. They're not releasing those works, and they're not a substitute for the digital text, but they're using them to learn how those sentences are structured in that process.

Mr. Majid Jowhari: That's exactly the point I was trying to make. When it comes to machine learning, you need a large set of data. So whereas when we are using copyright, we're saying let me copy 10% of this one story or this one poem out of a list of all the poems, within machine learning, you have to provide almost a whole book, or a book of poems, or a book of pictures, and all of those. Then no so-called 10% rule applies.

How do we deal with that? It's going to come and it's just around the corner.

Ms. Maya Medeiros: I'm not sure how you would deal with that. I think there should be some clarity as to whether or not that's permitted under the current framework. I think the 10% rule is a little bit different in this context, because you're not giving 10% of the book to a student or to another person and saying, "Don't buy the book". It's not a substitute for the original intent of that work. Ideally you want more than just 10 poems. You want every poem in the world if possible.

That's the diversity, particularly looking at translations and what have you. If you're only looking at one poem or a set of poems and saying that this is what is good but all of those poems are created by

one type of person, then that notion of what's good or what has a happy sentiment is flawed or biased because you don't have access to a larger training set.

Mr. Majid Jowhari: Let's go to blockchain. We know based on the encryption and the distributed model, it's gaining recognition as being able to help us deal with issues such as cybersecurity or even infringement in information.

Given the fact that we need this large base of information or input, how would blockchain be able to help us?

Ms. Maya Medeiros: I think blockchain would be able to help us in the sense that it can automate decision-making using a smart contract for distributing payments, for example, or for tracking usage. It's just a way to upload that data. It could use a huge dataset. Then you could run artificial intelligence systems over that dataset as another training set if you wanted, as another data structure, and you could understand usage or patterns and that kind of thing from it. I think blockchain is helpful particularly with smart contracts embedded in it for distributing payments or tracking usage in a way such that it doesn't enable one centralized source to handle all of that data.

Mr. Majid Jowhari: Okay, great.

The Chair: That brings to a close the second panel. I really appreciate all of your input. We've been hearing these stories all across the country. There's a lot of work that we have to put together, trying to marry the new and old technology and making sure that culture can thrive.

We are going to adjourn for the day. We will be back at 7 o'clock for the open-mike session. If you want to come back and spend two minutes and get to the heart of the matter and say what you have to say, I encourage you all to come back.

Thank you very much.

Ms. Maya Medeiros: I have one question about the process. I understand that written submissions are going to be accepted. Is there a timeline around when they should be submitted?

The Chair: Currently, if you go to the INDU committee's home page, you can find the report, and you will see a button for briefs. You can submit a brief. You can submit correspondence. There is no timetable because this is a longer study.

Ms. Maya Medeiros: Okay.

The Chair: We haven't put a time limit on it as of yet.

Is that correct?

Mr. David Groves (Committee Researcher): If you give it to us before the summer, we'd love it because then we can read it over the summer.

• (1730)

The Chair: They have nothing to do over the summertime.

Thank you very much.

The meeting is adjourned.

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