

Members of the Committee, Hello. *Bonjour.*

I'm Greg Hollingshead, Chair of the Writers' Union of Canada, which represents approximately 2000 Canadian book authors. I'm a writer myself, and for 30 years, until I retired, I was an English professor at the University of Alberta. With me today is Marian Hebb, our Legal Counsel.

Thank you for inviting me to talk to you. I know you've been hearing a lot about the expansion of fair dealing to include "education," and I know you must be tired of the subject. But I hope as a teacher and a writer—a consumer and a creator—I can cast some light on how and why this broad exception is likely to launch an unintended assault on the intellectual property of Canadian writers.

When Bill C-11 was introduced, the Honourable James Moore, Minister of Canadian Heritage, stated that when laws are clear, consumers know what the boundaries are. He also said that it is wrong not to allow people to protect what they have invested in. He was talking about digital locks, but he inadvertently put his finger on exactly what the Writers' Union believes this new education exception fails to do, and that is to give students and teachers sufficient guidance concerning what is lawful and what is not when it comes to copyright. By so failing, it fails to respect the property of creators.

A few years ago, a short story of mine appeared in a print anthology for colleges and universities. For the rights to my story I have been paid for its appearance in successive editions. But in recent years, fewer instructors have been using print textbooks in courses. Instead the instructor creates a course pack, like this one from my own university, a compilation of photocopied texts for distribution to students taking a particular course. This one provides sections or chapters of books, plus one essay from a journal. In 2010, Canadian universities and colleges copied over 100 million pages from close to 120,000 unique titles for paper course packs alone.

But increasingly these days, the instructor will, instead of offering a course pack, post, in digital form, the texts she wants to teach and discuss, on a website devoted to the course and accessible only to those teaching or taking that course.

This same short story of mine is now available, through a licensing agency representing authors

and publishers, for any teacher in the world who chooses to include it on a course site. For this digital use, my publisher and I are paid a fee. Just as I was paid a fee for the use of my work in a traditionally published text. And just as I was paid by our national licensing agency Access Copyright, which issued a licence to the university or college, so that its instructors could make use of my work in a course pack or for distribution of multiple copies in the classroom.

This is all good. Whether in a course pack or for distribution of multiple copies to the class or on a dedicated website, texts for a particular course are now provided much more efficiently and at a lower cost to the student. The student gets easy, cheaper access to professional, Canadian texts, the writer and publisher get paid for their work, for their product. And the institution doesn't need to do the work of securing rights to individual works or worry about its staff or its students violating copyright.

The problem arises because Bill C-11 fails to make clear what sort of reproduction for educational use constitutes fair dealing and what sort does not.

As an educator myself, I know that teachers are not the enemies of creators. The working teacher believes that creators should be compensated for their work. She understands that this means schools' paying for a blanket licence to copy. Teachers want to pay, and they have said as much, to this committee and to the C-32 Committee. The question is what they need to pay for, and that is what Bill C-11 does not as yet define. The Writers' Union of Canada believes that it needs to do so, that it is for Parliament, not the courts, to decide what the education sector should pay for.

The larger context here is that we are all living in a culture of free digital information and entertainment. In this digital climate, human behaviour can't be counted on any more than digital locks can be counted on in the realm of books, when you can buy a printer with a scanner for under a hundred dollars. I can assure you from first-hand experience that if Bill C-11 passes unamended in this respect, the result will be a perfect storm of unauthorized copying in the schools. It's no secret that the noisiest opposition to Bill C-11 has been from people who have come to assume that free access to everything digital is their right. And it's no secret that students today have grown up in a culture that

has encouraged them to expect free use of everything they can download.

And it's also no secret that over fifty colleges and universities, by refusing to pay collective licensing fees, have been doing another kind of downloading: downloading onto the working teacher the responsibility, the time, the extra labour, and the liability for clearing the rights to the works she teaches. But how many teachers are going to the trouble to clear those rights, when the institution they work for has rejected collective licensing; when the website for any particular course is next-to-impossible to police; when, to all appearances, and by all reports, Bill C-11 is on its way to loosen up restrictions around copyright in education, although in ways that nobody can clearly predict?

Just last week this committee was addressed by educators who talked about the copying, for classroom use, of a few pages here, a few there, as a trivial matter that should be considered fair dealing. But look at the aggregate: multiply this practice by the number of classrooms in this country, where nearly 250 million pages of books are copied annually in Canadian schools, and there alone you have lost revenues to writers and publishers in the tens of millions of dollars annually. A few pages here, a few there, is not about ease of access to materials, it's about payment for copying. The educators are asking you to excuse them from paying for what they are already licensed to do.

In its CCH ruling, the Supreme Court named damage to the market as only one of six or more factors to be "considered" when deciding if a dealing is fair, and not necessarily the most important. A dealing may be considered fair that does damage to the market, and a few pages here and a few there in the classroom would be dealing that would do major damage to the market. This potential for damage to the market and for uncertainty of continuing investment in Canadian publishing that will result from unclear legislation are too great for Parliament to leave to the courts.

We ask you, the members of this Committee, to clarify the legislation, to make it evident that uses being paid for today will continue to be paid for tomorrow. Otherwise the money the schools will save will come directly from the pockets of the poor, in this instance Canadian writers, who earn on average less than \$20,000 a year from their writing.

The Writers' Union of Canada has taken an active role in the creation of, and along with 67 other Canadian arts organizations is a signatory to, a document sent to you in January with proposed amendments that address our concerns. The Writers' Union has also submitted to you a brief concerning Bill C-11 that addresses this and other issues, including user-generated content and digital delivery by libraries.

Here, now, today, we are asking that you make good Minister Moore's commitment to clear laws and the protection of investment, that any fair dealing exception for education in Bill C-11 be worded in a way that will ensure that revenues will continue to flow to us undiminished when our works are used in the classroom in either paper or digital form, and that fair dealing not apply if it would our legitimate interest or have a detrimental effect on the market for the work.

Only with such changes will the use of my intellectual property in an educational context continue to generate income for me or for my publisher. This is only fair. Anything short of this will result in expropriation without compensation.