

**Written Submission for the Pre-Budget Consultations in
Advance of the Upcoming 2023 Federal Budget**

by:



The Writers' Union of Canada

List of Recommendations

Recommendation 1: That the government immediately amend the Copyright Act in order to repair the damage to the cultural economy from unregulated educational copying of published works.

Recommendation 2: That the government provide additional annual funding in the amount of \$15 million for the Public Lending Right program, bringing the program's budget to \$30 million annually.

The Writers' Union of Canada

The Writers' Union of Canada (TWUC) is the national organization of professionally published writers. Representing over 2600 authors across Canada (members in every province and territory), the Union was founded in 1973 to work with governments, publishers, booksellers, and readers in order to improve the conditions of Canadian writers, and increase legal access to their work.

Because a lively and diverse literary culture is essential in defining Canada and its people, the Union supports its members, and advocates on their behalf for the advancement of their common interests. In so doing we promote the rights, freedoms, and economic well-being of all writers.

Past advocacy work by the Union has led to such notable achievements as the establishment of Public Lending Right and collective copyright licensing through Access Copyright, which provide writers with financial compensation for the use of their work by libraries and through electronic reproduction. Members of the Union benefit from a range of services that are not otherwise easily available to writers working in isolation. This includes collective legal action such as the 2006 Heather Robertson v. Thompson Corp. class action lawsuit, and the 2013 Access Copyright v. York University case, as well as support for international action such as Authors Guild v. Google, and the current publisher lawsuit against the Internet Archive's Open Library book-scanning and lending program.

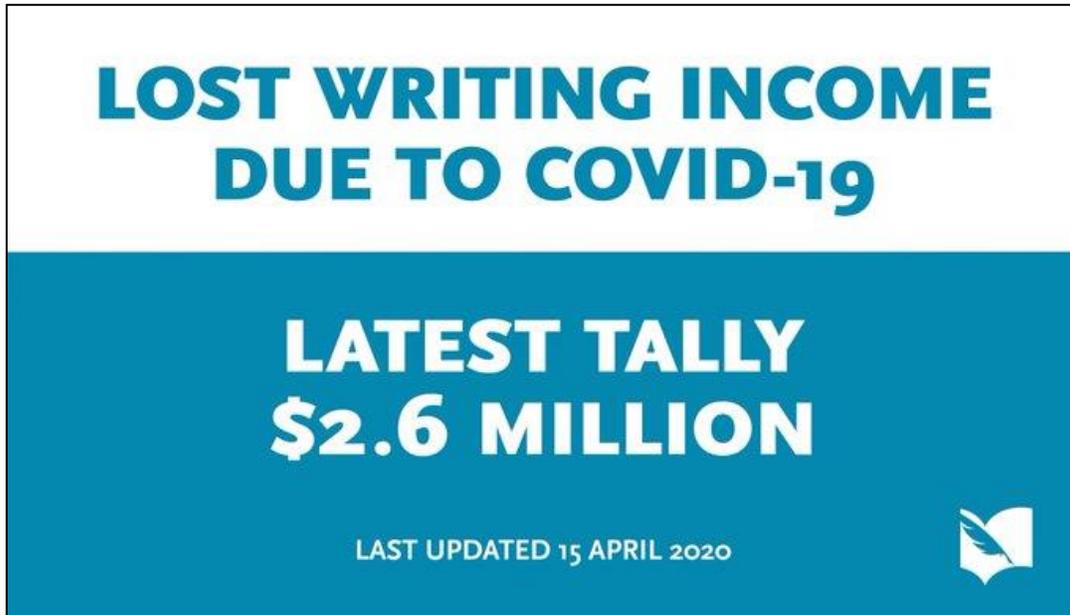
The Union has been a leading voice in Canada's copyright reform process, and chairs the International Authors Forum (est. 2014), an umbrella group representing over 700,000 authors worldwide in the ongoing discussion around creators' rights and broad access to published literature.

Recommendation 1:

That the government immediately amend the Copyright Act in order to repair the damage to the cultural economy from unregulated educational copying of published works.

The [average income for writers has dropped precipitously over the last decade](#), due primarily to the effects of uncompensated educational copying. The writing and publishing sector has lost hundreds of millions of dollars to this copying since schools, colleges and universities declined to license their copying after ill-advised legislative change in 2012. This is a loss that has held our sector from growing significantly despite increased profile for Canadian writers and books around the world, because domestic markets are crucial for cultural economy development.

That is all without considering the damage from the global pandemic. A TWUC survey put in the field in the first months of the COVID-19 lockdown showed collective income losses to writers in the millions just in that short time.



The infographic is a rectangular graphic with a white top half and a blue bottom half. The top half contains the text "LOST WRITING INCOME DUE TO COVID-19" in large, bold, blue capital letters. The bottom half contains the text "LATEST TALLY \$2.6 MILLION" in large, bold, white capital letters. Below this, in smaller white capital letters, it says "LAST UPDATED 15 APRIL 2020". In the bottom right corner of the blue section, there is a small white icon of an open book with a quill pen resting on it.

This means, for the time being at least, the pandemic has essentially destroyed a meaningful writing economy in Canada – one that can sustain its creators. TWUC is aware of authors leaving the business as a result.

Canada's authors would have been much better positioned to withstand the economic impact of the lockdown had they been properly compensated for the copying of their work in the education sector over the last decade. According to rates set by the Copyright Board of Canada, approximately \$200 million is owed in arrears by the education sector for copying dating back to 2011 (before passage of 2012's Copyright Modernization Act). Since 2012, neither the K-12 nor Post-Secondary sectors have meaningfully engaged with collective licensing for their copying, refusing licenses and ignoring tariffs set at the Copyright Board.

With the Supreme Court of Canada decision in *York University v. Canadian Copyright Licensing Agency (Access Copyright)*, 2021 SCC 32 released in July 2021, Canada's writers find ourselves in an absurdly unfair situation. The SCC confirmed that the copying practices of the education sector are unfair under the law. But in the same decision, the SCC removed authors' ability to work collectively and enforce their rights through Copyright Board tariffs.

Desperately in need of income to get through this ongoing global emergency, authors have no access to the hundreds of millions of dollars owed to them, and must now spend more time and money on potential new legal challenges as directed by the court.

The education sector's broad refusal to license the work they copy has been going on now for a decade, despite repeated rulings against their copying guidelines. We would like to point out that there is a standing budget promise from the government to rectify this situation, and our members anxiously await implementation of the promised repair.

TWUC calls on the government to immediately remedy this situation by amending the Copyright Act to clarify that fair dealing does not apply as an exception for educational use when a reasonable licensing solution is available. Furthermore, we ask that the purpose of the Copyright Board be clarified and made explicit (in that tariffs set at the Board are mandatory).

Recommendation 2:

That the government provide additional annual funding of at least \$15 million for the Public Lending Right program, bringing the program's budget to sustainable levels.

Canada's Public Lending Right program, administered by the Canada Council for the Arts, was designed specifically to compensate authors for the collection and ongoing free use of their work in Canada's public libraries. As [Roy Macskimming writes](#) in a series of government funded research papers on the subject, PLR "embodies a bargain struck in good faith between Canadian authors and the Canadian public" and is a form of "natural justice" that is squarely in the public's interest. Authors happily see their books freely available in public libraries, and the government provides a payment for that use.

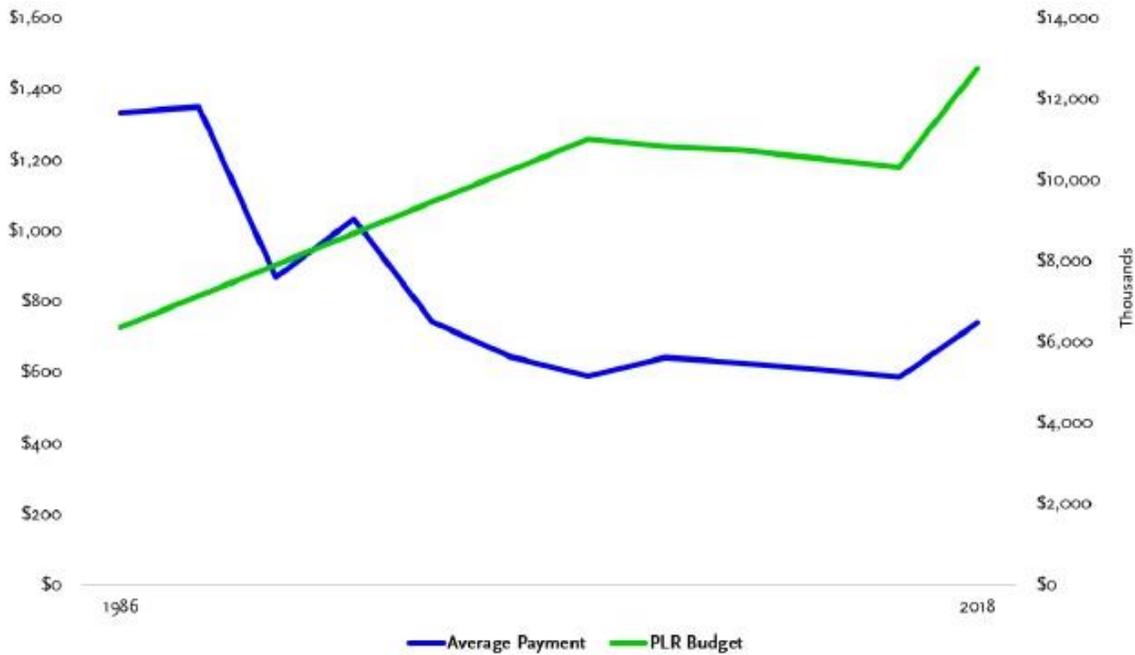
In 2021, Canada's PLR paid out just over \$15 million dollars to over 20,000 authors and other published authors. The average payment to individual authors was \$827. Authors view these PLR payments as an essential, yet shrinking, part of their annual income mix.

When the program was launched with a much lower budget in 1986, the average payment for authors was \$1,344 (adjusted for inflation). There has, therefore, been a decrease in average payments of approx. 38%. While Canada's writing and publishing sector has itself invested for growth and greatly increased the number of Canadian books in Canadian libraries, the government allocation to the PLR budget has not increased at anywhere near a sustainable rate.



PLR Budget and Average Payment Comparison (Adjusted for Inflation)

Prepared by The Writers' Union of Canada



Canada's writers are grateful for this 35-year-old cultural support. Clearly though, the PLR's budget has not kept pace with sectoral need. Furthermore, it is not adequately prepared for the explosive growth of titles that results from the recent acceptance of both e-books and audiobooks into the program.

The number of writers and titles in the program has increased more than fivefold since 1986. While indicative of cultural success for the country, this program pressure has resulted in a number of constraints placed on PLR payments, including a sliding scale of book-value based on number of years in the program and, beginning last year, the retirement of books from the program after 25 years. These constraints have resulted in over 20,000 titles dropped from the program. What this means is that Canadian classics still in demand are no longer receiving PLR compensation, despite still being present in the library systems.

Put plainly, the value of a PLR payment has shrunk considerably and, with the loss of titles outside naturally occurring attrition, the PLR budget is struggling to maintain the relevance and meaning it once had as a true support program. Combined with the income losses described under TWUC's first recommendation, Canada is in a position where legal and funding supports for the creators of our national literature have shrunk to irrelevance. This is a dire circumstance for Canada's standing in world culture, and must be immediately addressed.

We would like to point out that there is a standing budget promise from the government to increase the PLR budget, and our members anxiously await implementation of the promised increase.

TWUC calls on the government to provide additional annual funding of at least \$15 million for the Public Lending Right program, bringing the program's budget to sustainable levels. Furthermore, we ask the government to commit to annual increases tied to program growth.



**CANADIAN
WRITERS'
EMERGENCY
RELIEF FUND**

Third round deadline is May 5, 2020.
writerstrust.com/ReliefFund

[#WriterReliefFund](https://twitter.com/WriterReliefFund)

TWUC considers itself to be a partner with government in the support of Canadian authors and readers, having helped to privately raise and distribute more than \$376,000 in emergency relief funding to authors and visual artists since the beginning of the COVID-19 lockdown. The Canadian Writers' Emergency Relief Fund was a joint effort between TWUC and the Writers' Trust of Canada, and benefited from no government support.

Thank you for considering the pre-budget recommendations from The Writers' Union of Canada. We are happy to consult further on the implementation of any of these recommendations, including by providing specific wording for legislative change.

Respectfully submitted on behalf of The Writers' Union of Canada, by:

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