



THE WRITERS' UNION OF CANADA

SURVEY OF CANADIAN AUTHORS ON EDUCATIONAL COPYING

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Executive Summary

KEY POINTS

- Every year, professors, instructors and teachers choose and then copy millions of pages of published work for use in classrooms across the country.
- Until very recently, when an author's work was photocopied for educational use, it was usual for that author to receive some compensation through licensing agreements.
- Collective licensing is an extremely efficient mechanism for making sure writers are properly compensated when their work is copied and used in schools.
- Some educators and administrators are now championing a way around compensating writers for educational copying.
- New guidelines published by a number of Canadian educational institutions claim up to 10% of a published work, entire chapters, stories, poems and articles copied for use in educational course packs as "short excerpts" covered by fair dealing.
- **Canadian writers disagree with these guidelines.**
- The work of Canadian writers has value. If it's good enough to be copied for educational purposes, then it is good enough to be paid for.
- Fair compensation for educational copying must continue if we are to maintain the Canadian writing, publishing, reading and learning ecosystem.

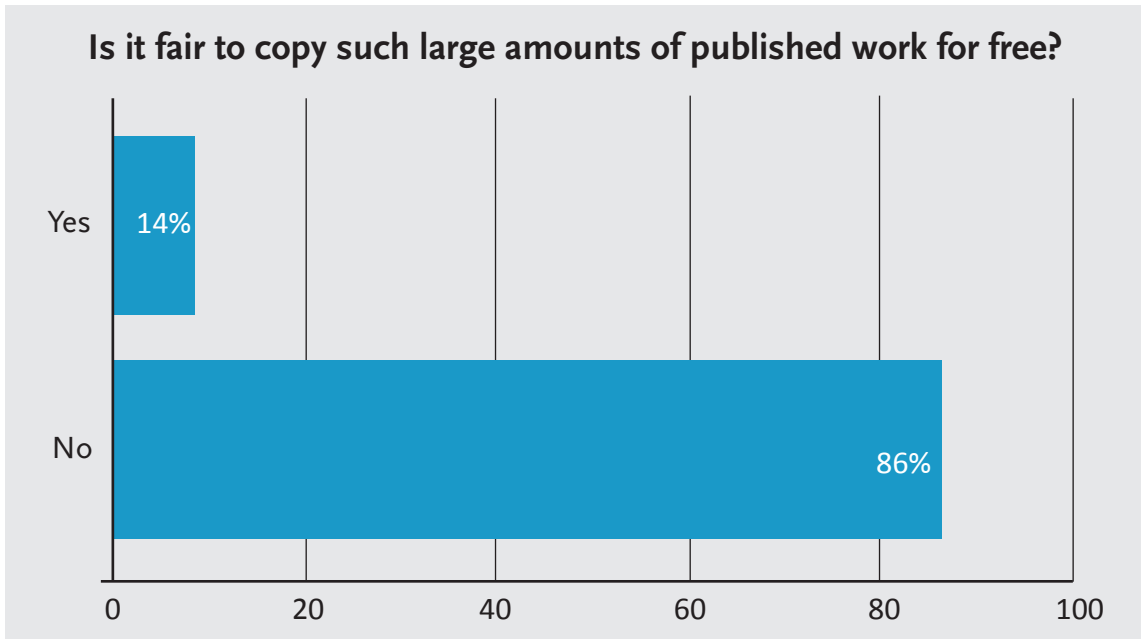
Is the copying of up to 10% of a published work, entire chapters, stories, poems and articles for use in educational course packs fair? Are educational institutions excused from the responsibility of seeking permission for, and paying for such large amounts of educational copying? Has Canadian society, with its new Copyright Act, really reached a new consensus on educational copying?

The results of this survey of Canada's professional writers leave us with no doubt – *there is no new consensus on educational copying.*

Not only do Canada's writers strongly disagree with the "fairness" of the fair dealing definitions hastily proposed by many educational administrations, it's clear a large number of Canada's professors and students also cry "unfair" when they see an entire short story, poem, article or book chapter copied for free.

While anti-copyright theorists and educational budget-makers may insist a new understanding exists, it's simply not true. There is a narrow interpretation and it's of their own devising, uninformed by the opinions of those actually involved in the work of creating, copying and teaching Canadian content in Canadian educational settings.

The Writers' Union of Canada's *Survey of Canadian Authors on Educational Copying* boiled this issue down to one basic question:



Fully 86% of respondents to TWUC's survey felt these new definitions were markedly unfair. Further, 83% anticipated that writers' incomes would suffer because of this change.

And to be clear, this was not just a survey of writers. Canada's writers are also Canada's teachers and professors. Many are also now, or have been, Canada's students. 70% of the respondents to the survey indicated they had some formal connection to the education system. If the proposed new guidelines and definitions were intended to address the concerns of students and teachers, they do not. Based on the results of this survey, one can conclude a great many of Canada's tuition-paying students and salaried educators think much of the copying being proposed is unfair.

The real work starts now. How do we get to a real consensus on educational copying? If there is to be further negotiation on the question of copying practices, amounts of copying, permission requirements and fair payment, both sides, the users and the creators need to be at the negotiating table.

John Degen, Executive Director
The Writers' Union of Canada

BACKGROUND

“I have no idea what a fair rate would be, but I believe an author is entitled to some type of compensation when his/her work is used to benefit others who are already being paid to do that job.”

– respondent to the TWUC survey

The Writers’ Union of Canada (TWUC) has been very actively involved in the discussion around copyright reform in Canada, and has closely monitored developments since the passage of 2012’s Copyright Modernization Act (Bill C-11).

TWUC’s primary concerns with ongoing reform are:

- the definition and interpretation of the word “education” as a category of fair dealing; and
- the definition of “short excerpt” for those wishing to claim fair dealing when copying work without permission or payment.

In the fall of 2012, a small group of outspoken advocates for copying without payment or permissionⁱ insisted that a new consensus had been reached on copyright and fair dealing, including the definition of “short excerpt.”

New guidelines published by a number of educational institutions and organizations claimed ***up to 10% of a published work, entire chapters, stories, poems and articles copied for use in educational course packs*** as short excerpts covered by fair dealing.ⁱⁱ The immediate result of this assertion was a loss of copyright royalty payments to Canada’s writers, as those amounts had traditionally been covered by paid licences and/or tariffs approved by the Copyright Board.

Similar guideline documents were hastily adopted by a number of schools after the passage of C-11. Yet, no-one had asked Canada’s professional authors – the creators and owners of the work being copied and used — if these new definitions of short excerpt or fair dealing fit their understanding of these terms.

So, TWUC asked professional authors to weigh in.

In April 2013, The Writers’ Union of Canada circulated a survey questionnaire to all 2023 names on its membership e-mail list. TWUC members are all professional book authors with at least one book credit to their name. Many TWUC members also work as educators in both the K-12 and post-secondary sectors.

Survey Results

WHAT SEEMS FAIR?

“Educators should respect creativity and promote respect of creativity as part of the educational process. Thus, educators should respect the rights of creators when presenting these creations to students.”

– respondent to the TWUC survey

The essence of the fair dealing provision within copyright law is, of course, the concept of fairness. In order for an instance of unpermitted and uncompensated copying to be considered “fair,” there must be a legal analysis of fairness. The following six factors provide a generally accepted framework for determining fairness:

- The purpose of the dealing
- The character of the dealing
- The amount of the dealing
- Alternatives to the dealing
- The nature of the work
- The effect of the dealing on the work

These six factors grow out of a general principle within the Berne Convention for the Protection of Literary and Artistic Worksⁱⁱⁱ, an international agreement on copyright and cultural work to which Canada has long been a signatory. Article 9(2) of the Berne Convention states:

“It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.”

The Berne Convention, therefore, also respects concepts of fair dealing within sovereign states and legal systems, but prioritizes the rights of the original creators to benefit from their work when it is copied. It is not enough for a country to declare that copying for a specific purpose (e.g. “education” – a new purpose added to Canada’s fair dealing provision with 2012’s Bill C-11) is permitted, it must also analyze whether or not each specific use for that purpose can be considered fair.

Recent disagreements over copyright in Canada have positioned the users of copyright-protected work against the creators of that work. For writers, this can seem a false dichotomy since, in professional practice, a writer is often both user and creator simultaneously. Writers are quite possibly the largest class of individual, professional users who depend on the fair dealing provision within copyright in order to create new work from the work of our predecessors. Writers use fair dealing in their own professional research and private study, for news reporting, criticism and review. Fair dealing is what allows one writer to quote freely from another, and either build upon or provide criticism to the ideas expressed by others.

Fair dealing is an important tool in the freedom of expression toolbox. If a writer was required to secure permission from another in order to briefly quote from a published work, how would we have ever developed a healthy tradition of critical analysis? And yet, writers also understand the need to limit unpermitted copying – to find a point of comfortable balance at which the requirements of the user and the rights of the original creator can both be respected. Few writers would feel the verbatim quoting of an entire chapter from a book was necessary in order to write a commercial review of that book.

While a number of Canadian school boards, colleges and universities have published new policy statements for their teachers and staff defining a new “fair dealing” territory of percentages and amounts of work, none of these policies have been subjected to serious legal analysis. What’s more, these policy statements appear to have been developed and published without any significant consultation with either writers, students or teachers. We are unaware of any survey of either students or teachers on the question of the fairness of these new policies. Following up on this report, TWUC may well do that work itself.

WRITERS ARE EDUCATORS

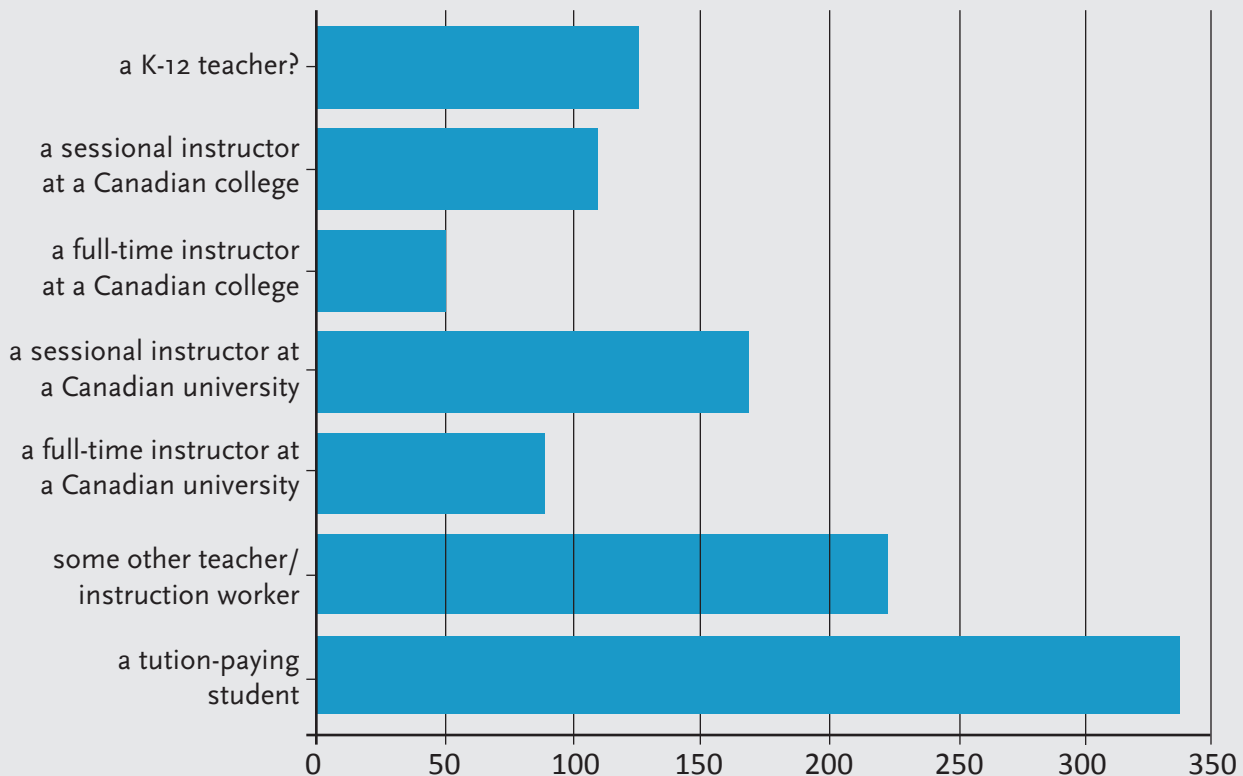
“As a former teacher, I was paid 100% for my work, as were all staff and technicians and support personnel, including people who operated the print room. No one worked for free or donated 10% of their wages. Writers, who get little, should be extended the same professional rights as teachers, and should be paid for their material. Fair dealing, as it is now understood by various institutions, exploits and disrespects the work of writers.”

– respondent to the TWUC survey

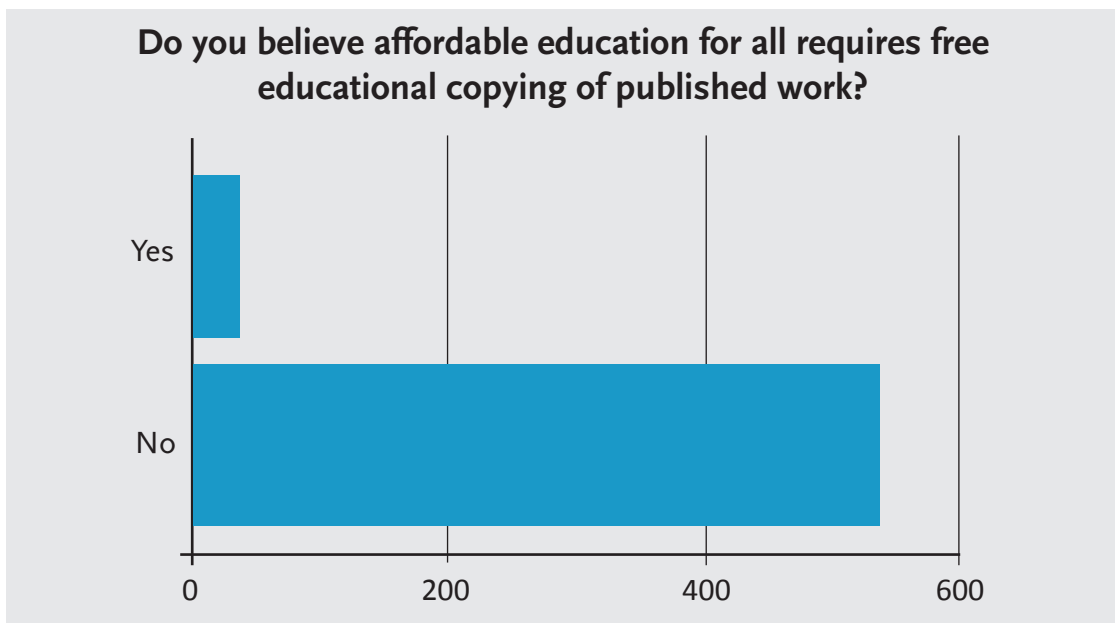
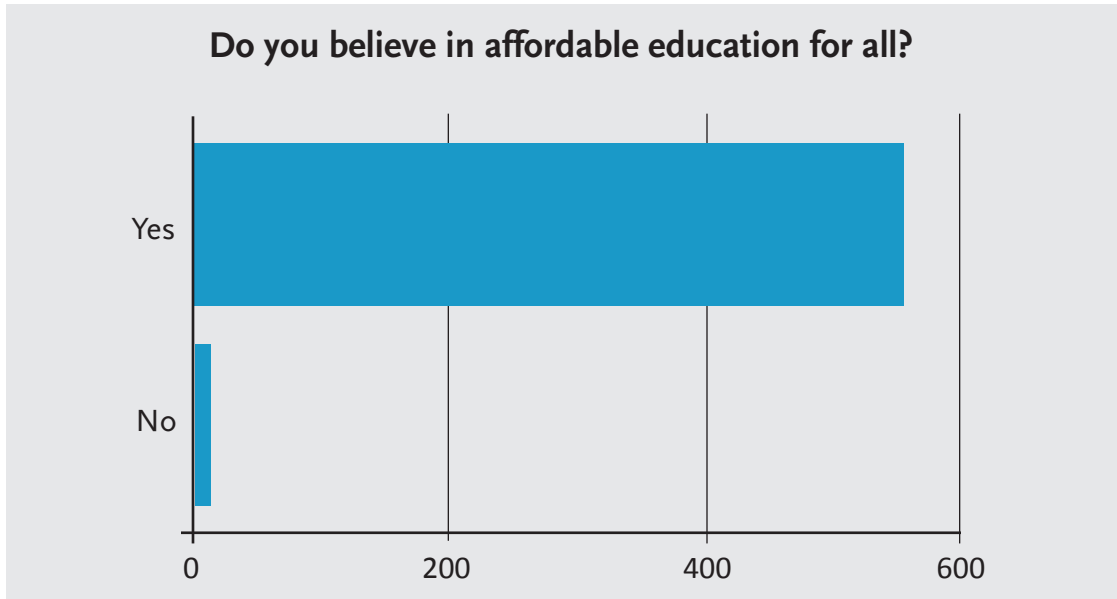
Of the 581 respondents to the survey, fully 405 of them indicated they had some professional connection to the education sector, either as a tuition paying student, a K-12 teacher or some sort of instructor at the college or university level. In other words, 70% of those who responded to this survey brought perspectives from both sides of the current educational fair dealing divide.

One might expect those with a strong educational sector connection would be more inclined to think larger amounts of copying are fair. In fact, there was no statistically significant variation in the response rate at all, with both students and K-12 instructors about 1% lower in the yes category, and post-sec educators about 1% higher. In other words, whether they have an educational connection or not, Canada’s writers believe overbroad copying of published materials is unfair.

Along with being a writer, are you now or have you been (check all that apply):



Respondents to the survey also expressed great sympathy for the core concept of affordable education. Fully 97% answered that they believed in affordable education for all, yet 94% did not believe large-scale free copying was necessary to achieve affordable education.

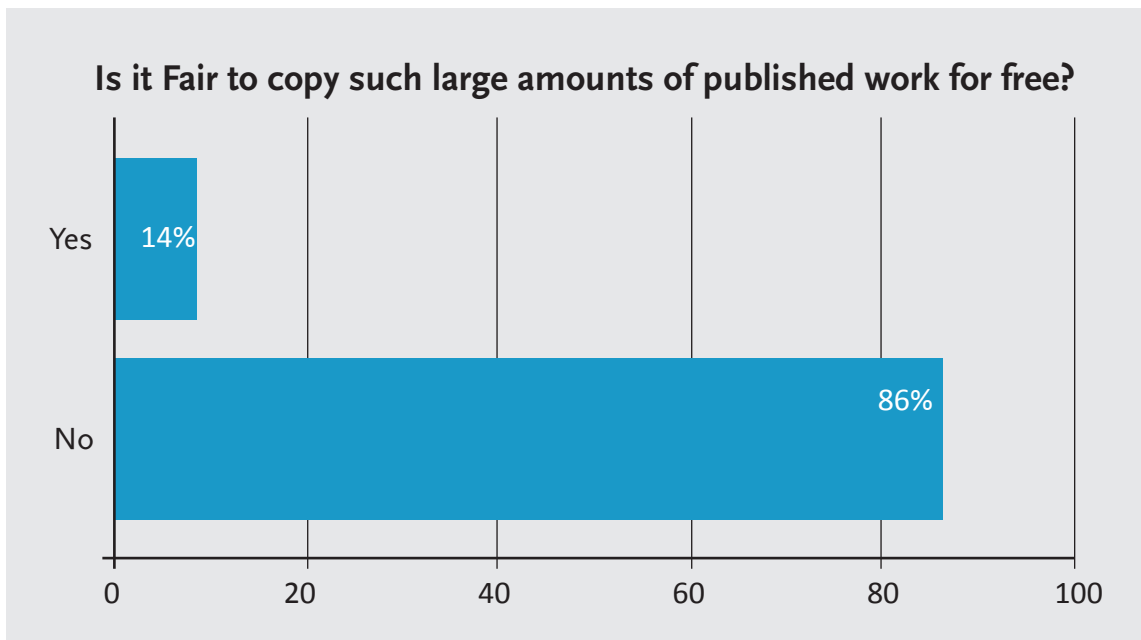


Furthermore, 78% of respondents felt the cost for copying should be borne by the educational administrations themselves. While the responses seemed to indicate that cost-sharing between students, taxpayers, administrations and in some cases even teachers is fair, the overwhelming majority would have the educational administrations pay for the copying.

WRITERS AGREE

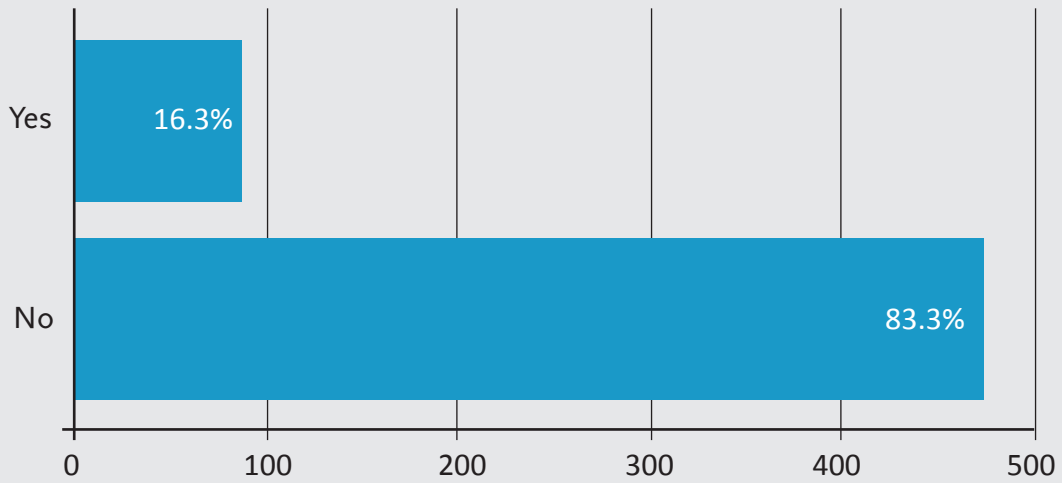
The results of the core questions in the survey around the fairness of new educational copying practices and policies show a strong majority of Canadian writers agree their own rights are being unfairly abused under these policies. When combined, these results present an unequivocal condemnation of education's aggressive attempt to expand the understanding of fair dealing in Canada.

86% of survey respondents felt the combined policies were unfair, while 14% felt they were fair.

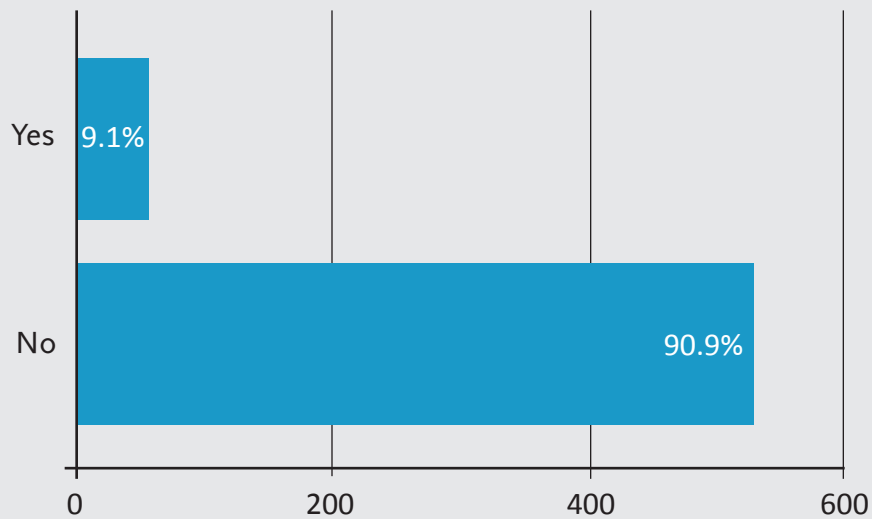


The following charts break down the overall results (all 581 survey respondents) answering the simple yes/no question "Is it fair?" for all of the new educational policy features.

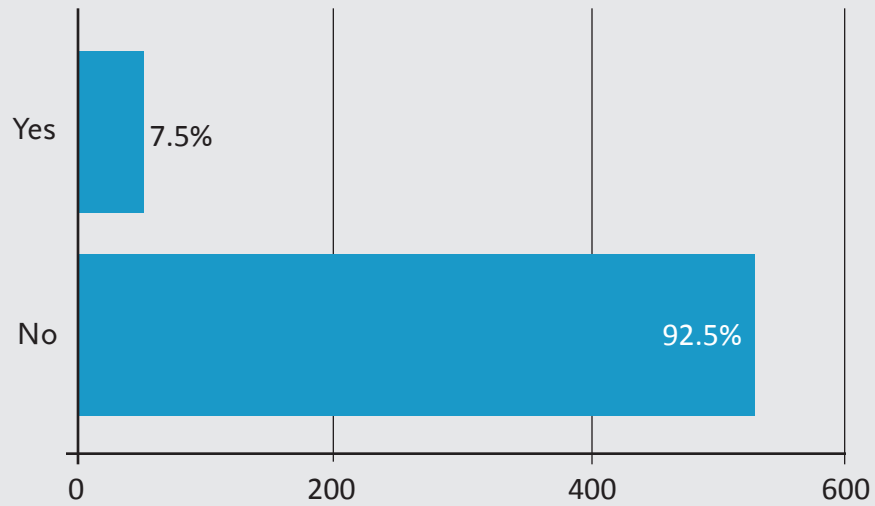
Is it fair for a school to copy and use 10% of a published work without permission from or compensation to the author?



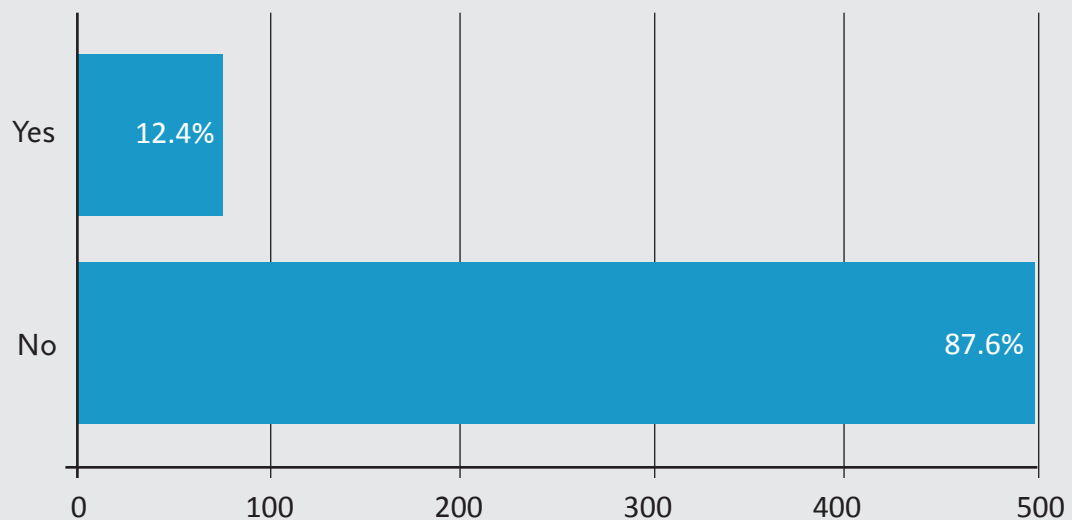
Is it fair for a school to copy and use an entire chapter of a book without permission from or compensation to the author?



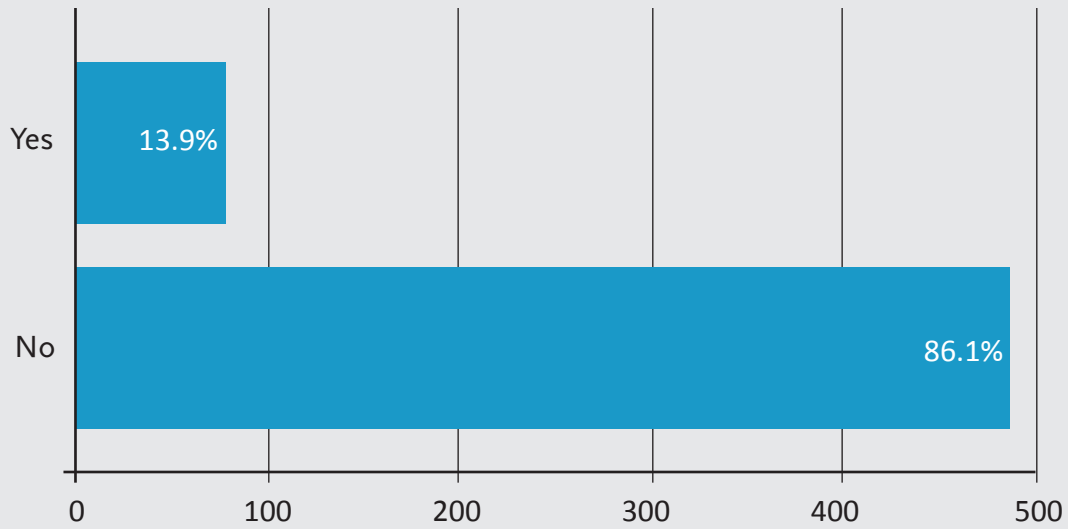
Is it fair for a school to copy and use an entire short story from a collection without permission from or compensation to the author?



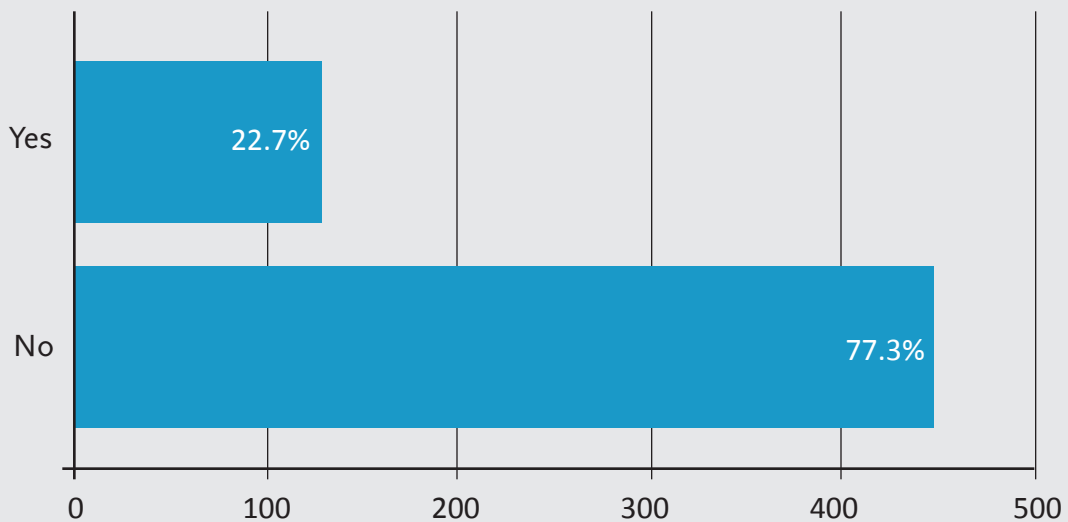
Is it fair for a school to copy and use an entire poem from a collection without permission from or compensation to the author?



Is it fair for a school to copy and use an entire article from a magazine, journal, or periodical without permission from or compensation to the author?



Is it fair for a school to copy and use an entire newspaper article or page without permission from or compensation to the author?



WHY IT'S NOT FAIR

Given the opportunity to expand on their answers, over half of the respondents did so, providing an eloquent and passionate record of discontent with recently adopted educational copying practices.^{iv} In their answers, most respondents revealed a complex understanding of current problems within the education sector. Teachers are overworked, students are burdened by increasing debt, and library acquisition budgets are strained. And yet, the survey revealed a strong insistence that budgets not be relieved on the backs of some of Canada's lowest paid workers.

"I write children's books. A huge part of the market for my works is K-12 schools and libraries. If schools can photocopy or download copies of my work without paying for it, my entire market has just disappeared in a single stroke. Every single thing I write could be construed as usable "for educational purposes." So what is the consequence of this? I can no longer write for the Canadian educational system. I will no longer write on topics that are of sole interest to Canadian children, teachers, parents, etc. Publishers can't make any money selling these works, so they won't publish them - and this is already happening. Teachers have literally BEGGED me for a book on Canadian pioneers. But who would write this for free? Not a professional writer. Who would publish it? Not a professional publisher. So if you want to see Canadian materials, on Canadian topics, in Canadian schools, libraries and stores, schools and other institutions must understand that there is no free lunch."

"It takes a long time and a lot of work to write one chapter, let alone a book. We should be paid for our work."

"The greatest difference is the absence of 'permission'. If I am asked I may well allow copying - or not. I'm not in a position to subsidize schools but may value exposure in some circumstances."

"Writers must be compensated for the use of their work. At the same time, schools/universities must find ways to do both: compensate authors and offer fair course pack prices to their students."

"Unfair: If I go into a restaurant, do I get 10 per cent of my meal free? Just by being there; and able to digest?"

"Teachers are paid to teach. Writers should be paid when their works are used in any form"

“I became an academic because I couldn’t make a living just being a writer, and part of the reason was that educational institutions proceed on the assumption that a writer’s work is free for educational purposes. When people in education (teachers, administrators, etc.) agree to work without pay because their work is “educational”, I’ll be glad to reconsider the issue. Until then, I consider the unauthorized use of my work an act of theft of intellectual property.”

“Yes, it is unfair not to compensate authors for the copying of their work, but as a former teacher, I can tell you that they do it all the time.”

“Using someone’s work without permission or payment is stealing. Contributing to Access Copyright allows educators to compensate those whose work they use for teaching purposes, just as they would if they bought the work (as a textbook for example). Why this change from using access copyright?”

“For Question 17, if it’s 10% of a short article - i.e. a couple of paragraphs - that’s fair. 10% of an article of more than, say, 3000 words, would not be fair. Nor would 10 % of a book, etc. The other actions are unfair because they disregard the substantial work of the author.”

“As a teacher of creative non-fiction and poetry in particular, I frequently used other writers’ work as models, but was always conscious and very happy that those writers were acknowledged by payments through Access. My own income as a poet and non-fiction writer is pitiful (\$12,000, if you add in all the readings, Access, PLR and royalties, for 10 books, many of them prize winners). Disgraceful if you believe that culture is an essential piece of any nation’s identity.”

“Probably for much the same reason that the phone company or the power company or the janitors or the faculty would give: those who provide products or services should be paid for them. Why would writers be different?”

“The work is the writer’s intellectual property, and it’s cost the writer time and effort to create it. That’s why copyright was invented. If the school or university wants to make use of a writer’s unique piece of intellectual property (as opposed, say, to whipping up something themselves), that use has to be paid for. Laws can’t just be scrapped because someone finds it inconvenient to pay for something.”

“Collective licensing has provided this kind of access to educators for two decades, while ensuring writers get paid a reasonable royalty when their work is used for education. The claim that this fair dealing expansion is about access is disingenuous. Educational administrators want to cut costs, and they are using student and teacher access as a red herring.”

“What other industry uses free labour and justifies it on grounds of ‘education.’ The irony, of course, is that many authors/writers will give free permission for use of their materials to get better known so not getting permission is not logical.”

“Educators are paid not only for their time in the classroom but for their time in preparing classroom material. Why should writers be expected to contribute any of these materials without payment? This amounts to unfair labour practices. If educators perform well, they can expect to be promoted and have salary increases. If writers do well, their work is more widely followed-- and copied. Why should writers who perform well have their incomes capped by being forced to give their work away for nothing?”

“Universities have money to purchase books, articles, etc. As a professor, I see people copying much, much more than they should. It is wasteful and not essential. Only when professors and universities have to pay, will they realize what they do not need and also will they recognize that there is an author involved.”

“My writing is my work, my many decades-worth of study, training, and slogging rewrites in order to contribute cultural and intellectual content that is meaningful to other Canadians, in particular. Some of my work has been translated into French, Korean and Bulgarian. I am paid for this because my work is valued. Where on earth do educators think cultural and intellectual content comes from? Why should we, with degrees and decades of training, go without payment for our work, work which is valued in other countries?”

“It’s almost irrelevant if it’s “fair”. Schools at every level have been doing this for at least 40 years. There’s no way to police it. I was a high school teacher in BC for over 30 years, and since budgets were axed, and books were falling apart, teachers photocopied stuff regularly, or had nothing for their students.”

“I understood that that was part of the deal for CANCOPY - an overall payment that gave access to portions of work, which, when reported, were included in general compensation...”

WHAT ABOUT THOSE WHO THINK IT IS FAIR?

While an overwhelming majority of survey respondents agreed the proposed definitions were unfair, a small number (14%) of respondents felt these definitions were fair. How did the YES respondents expand on their answers?

“The answer is to stop cutting school libraries, teacher librarians, and book budgets so teachers can easily buy more books and class sets and not be forced to choose between essentials. Also creating additional paperwork for teachers is unfair and an impossible addition to an already permissions-riddled system.”

“I answered yes, but uneasily. While I believe things should be available for strictly educational purposes, I can also see that this could lead to abuse, and I do think that permission should be sought in all cases, even if compensation is not being paid.”

“Textbooks and anthologies limit the number of authors students are exposed to. My short stories are not in any of the official Canadian ‘textbooks’ for high school English classes. I would like students to learn about my work--that won’t happen if teachers can use only the books they buy. So I’m happy to have teachers photocopying a short story of mine to use in class. Moreover, school boards don’t have money for teachers to buy new texts until long after the ones being used are out of date. Allowing teachers to photocopy exposes students to more recent writing as well. Teachers don’t have money to pay to copy articles, etc. so if we impose a cost, many teachers just won’t use the materials. Again, I’d rather have students reading my work than never hearing about me.”

“...As a teacher, I need to be able to respond quickly to issues that arise in a class on a day to day basis; there are times when I’m teaching a small class (<30) that I will photocopy a few pages or a poem in response to an issue that arises. I admit that occasionally I have been known to blatantly copy the few good pages from an academic-focused text book that otherwise would cost \$50 or even \$100, and for which “the author” gets little anyway. On the other hand, it is not fair to assign a whole syllabus of copied material, to distribute for classes of 100’s of students...”

“I’m a writer and an instructor. I want the freedom to introduce whatever I want students to read without having to constantly worry about adequate and fair compensation to the writer; as a writer, I get minimal compensation already, it’s true -- but if push comes to shove, I think I’d want someone to have read my poem/article/story than not.”

The concerns of the YES cohort tend to be about student and teacher access to material, and about writers battling obscurity to find new readers in the classroom – all valid concerns shared by other TWUC members. There also seem to be a number of YES respondents who assume a collective licensing structure remains in place despite the new definitions:

“I assume students are already charged for course packs/compilations etc., so that would be their contribution.”

“I don’t know what the impact will be (25 & 26 above). Re: 28, I believe in limited free copying. Remember that a lot of the professors and instructors doing the copying are also the authors of works being copied. My school by the way, has paid for an Access Copyright license.”

“Copying should be factored into the costs of tuition. It is a ‘facility’ use, just like any other part of an educational institution - gym pass, counselling services, etc...”

“While I believe that licensing rights should be paid for by educational administrations, in most cases, when all is said and done, those costs will be absorbed by taxpayers. Some educational institutions are more than able to pay for the licensing fees, while others cannot. Each case needs to be examined independently, according to the needs of the community.”

“These are all complex questions; one needs the maximum timely flexible access to all intellectual material but the producers should be paid. How best to ensure that all interests are covered poses some interesting problems.”

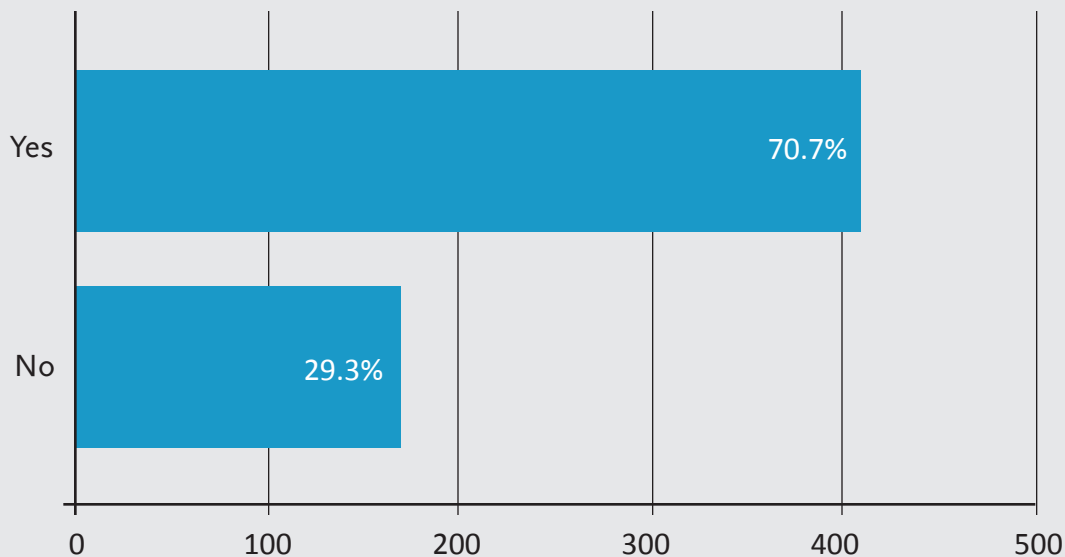
“While I think it’s usually the taxpayers who pay for everything with regards to education, (We pay a hefty school tax as it is) so I think perhaps it is up to school administrators to budget for some of the licensing required for copyright compensation. Maybe they will realize they can do with less board members in order to find the money for it in their budgets. It seems to me that administrations are top-heavy with the ‘higher-ups’ receiving huge salaries and then the money trickles down the line. Get rid of the excess and have more money for what really matters in education.”

This is a fascinating result, as it points to a general misunderstanding about copyright reform throughout Canadian society, even within the populations most affected by recent developments. The assumption that changes to these definitions will only mean greater access, and that a fair system of payment remains in place are, unfortunately, wishful thinking. We attempt to address this misunderstanding in the next section.

A CHANGING LICENSING ENVIRONMENT

The roughly 70-30 split in survey respondents who indicated awareness of the policy change in many Canadian educational settings reveals both that writers, in general, are quite naturally attentive to changes in their revenue opportunities, and that the attempt by many educational administrations to avoid payment of license royalties for educational copying has not completely filtered down to the very community who will be most affected by this change.

Are you aware that many Canadian colleges and universities have developed “fair dealing” copyright policies that state it is fair to copy without permission from, or compensation to the author: *10% or less of a work, or *one entire chapter from a book; *an entire short story from a collection; *a single article from a periodical; *an entire newspaper article or page; *an entire single poem from a work containing other poems?



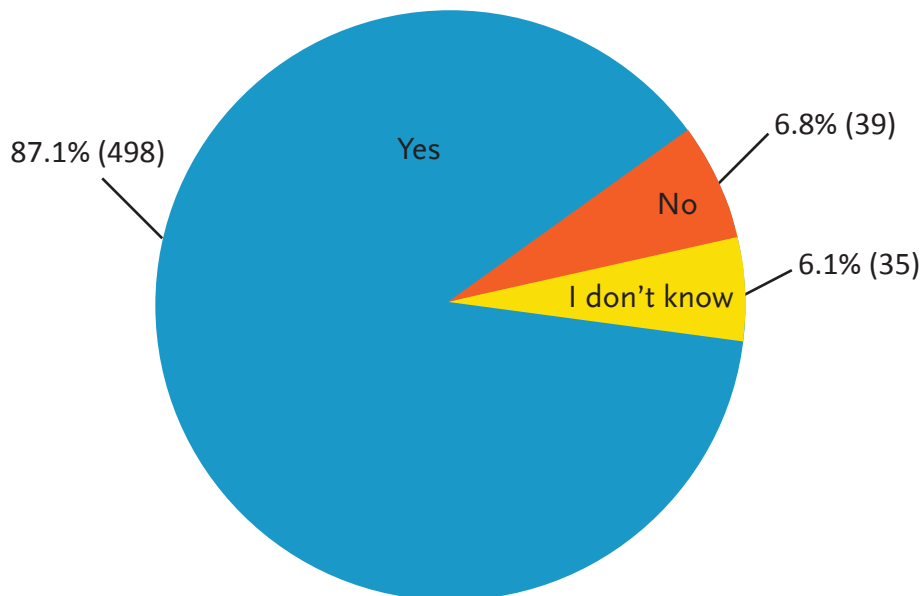
There are very few authors of books in Canada who make their entire livelihood from either book sales, copyright royalties or other avenues to writing income (freelance, corporate, government writing, etc.). In 2011, The Writers’ Union of Canada conducted a general survey of its membership (book authors)^v, and discovered that 83% of respondents earned \$15,000 or less from their writing in the previous year (73% earned \$10,000 or less). In a 2006^{vi} study of thousands of professional writers in Canada (including freelance magazine and newspaper

writers), the Professional Writers Association of Canada (PWAC) found the average annual earnings for Canadian writers was \$24,035. Both these surveys found writers in Canada earn significantly below the national median (between \$31,000 and \$33,000 depending on family circumstances).^{vii} It is important to keep these numbers in mind when considering the potential impact of lost copyright royalties on an individual writer's total income.

THE BUSINESS OF EDUCATIONAL COPYING

In 2011, The Canadian Copyright Licensing Agency, more commonly known as Access Copyright, documented approximately \$7.5 million dollars in copyright royalty payments distributed to creators. This represents 43% of the total royalties distributed by the agency in that year.^{viii} While not all of those creators were writers, and not all of the writers paid were Canadian, it is clear that royalties from collective licensing are a significant contribution to the Canadian writing revenue stream.

Are you an Access Copyright affiliate?



This chart shows that just over 87% of respondents to the survey are aware of their affiliation with collective licensing in Canada. It is not particularly unusual for a newly published writer to be unaware of collective licensing. One of the functions of a professional association like

TWUC is to educate members about the administrative steps necessary to have their work represented in the collective repertoire. While an 87% success rate on this measure is good, it does suggest more work needs to be done by TWUC to make sure all of its members can benefit from licence royalties.

Approximately 85% of collective licensing revenue (in writing and publishing) comes from educational licensing. Writers and publishers are paid royalties through the collective licence process whenever their work is copied for use as curriculum and/or reading assignments in Canadian classrooms, and, clearly, there is a great deal of educational copying. The copying must be considered significant to fall outside the fair dealing provision within copyright law, but it cannot be so significant that it replaces the need to purchase entire texts where necessary – for instance, even with a collective licence, it would not be legal for a teacher to distribute photocopies that constitute significantly more than 20% of a given text.

While there are minor variations depending on negotiated agreements, the copying territory covered by collective licensing in Canada is generally understood as follows^{ix}:

One can always copy

- anything with the permission of the copyright owner
- all or part of a work for private study, research, criticism, review or news reporting, if what you do is “fair dealing”
- insubstantial parts of a work
- works published during the author’s lifetime, if the author died more than 50 years ago (but not recent translations or annotations of such a work)
- if an exception in the Copyright Act applies

With a licence or under a tariff:

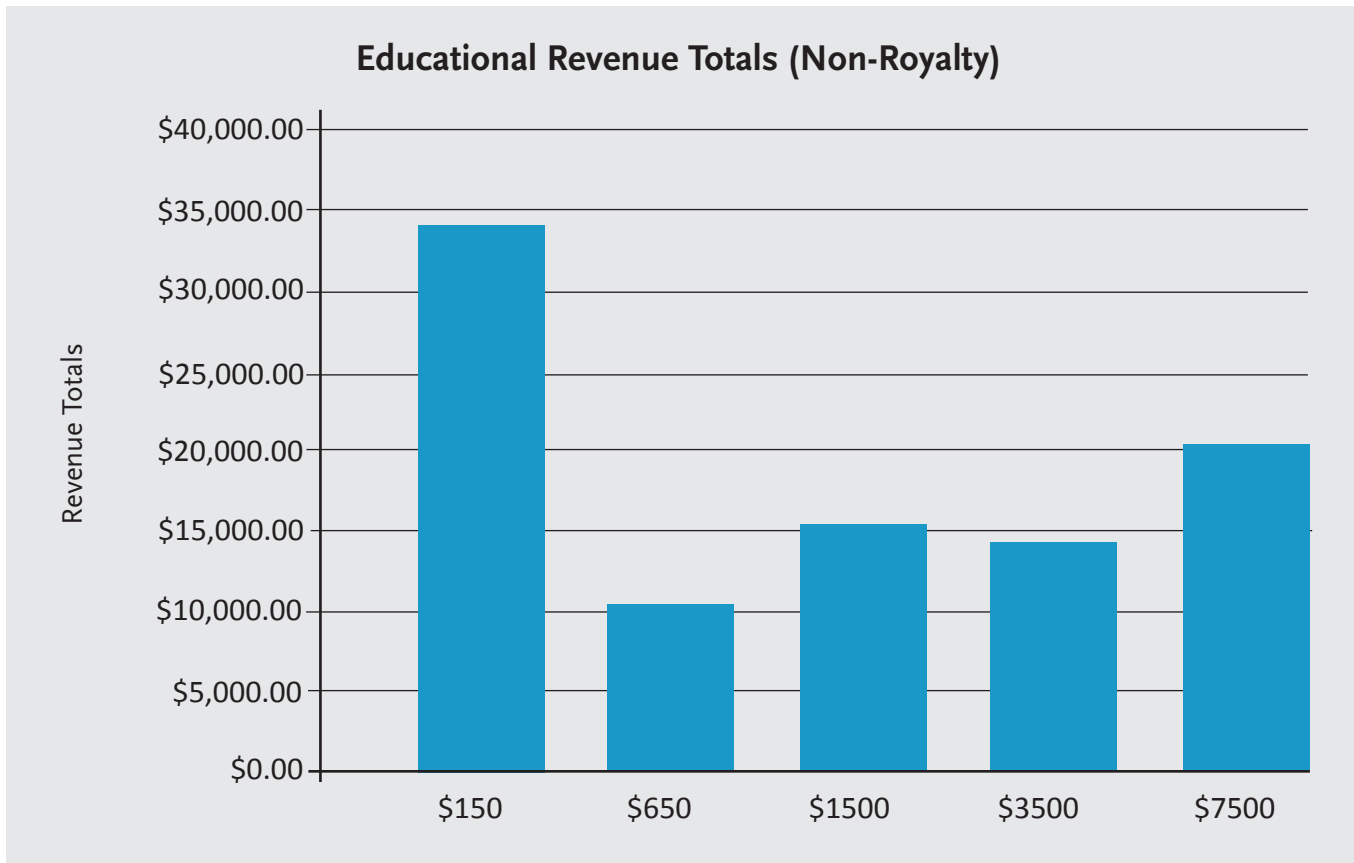
One may make copies, for school purposes, of excerpts of up to 10% of books, journals, magazines and newspapers.

The 10% limit may be exceeded if required to copy:

- an entire chapter that comprises 20% or less of a book
- an entire article or page from a newspaper, magazine or journal
- an entire short story, play, essay or poem
- an entire entry from a reference work
- an entire reproduction of an artistic work from a publication
- an entire reproduction of a musical work provided that, if taken from a book, does not comprise more than 20% of that book
- up to 100% of reproducibles, including assignment sheets and blackline masters
- an entire choral, orchestral work, or other commercially available sheet music*

The licence parameters provide broad permission for copying in the educational context, and allow educators to copy significant portions of copyright-protected texts where the buying of the full text is prohibitive or undesired.

TWUC’s survey collected data on individual respondents’ recent earnings from the copying and use of their work in educational settings.



The chart above shows the results for Question 8:

If you know the answer, how much have you been paid by schools, colleges or universities in the previous years for these educational uses (not counting collective licensing royalties)?

Of the 494 respondents answering this question, 261 of them recorded a payment amount for educational uses (the rest responded that they did not know how much they had received). The majority of the reported amounts are in the \$150 range – only 3 writers each

reported either \$3500 or \$7500 direct payments from education outside collective licensing. However, the total amount recorded across all answers came to \$87,550, with a median payment of \$250 per writer^x.

When direct payment for educational uses are compared to collective licensing royalty payments for copying, we see a significant difference in the median. The chart below shows results for Question 13:

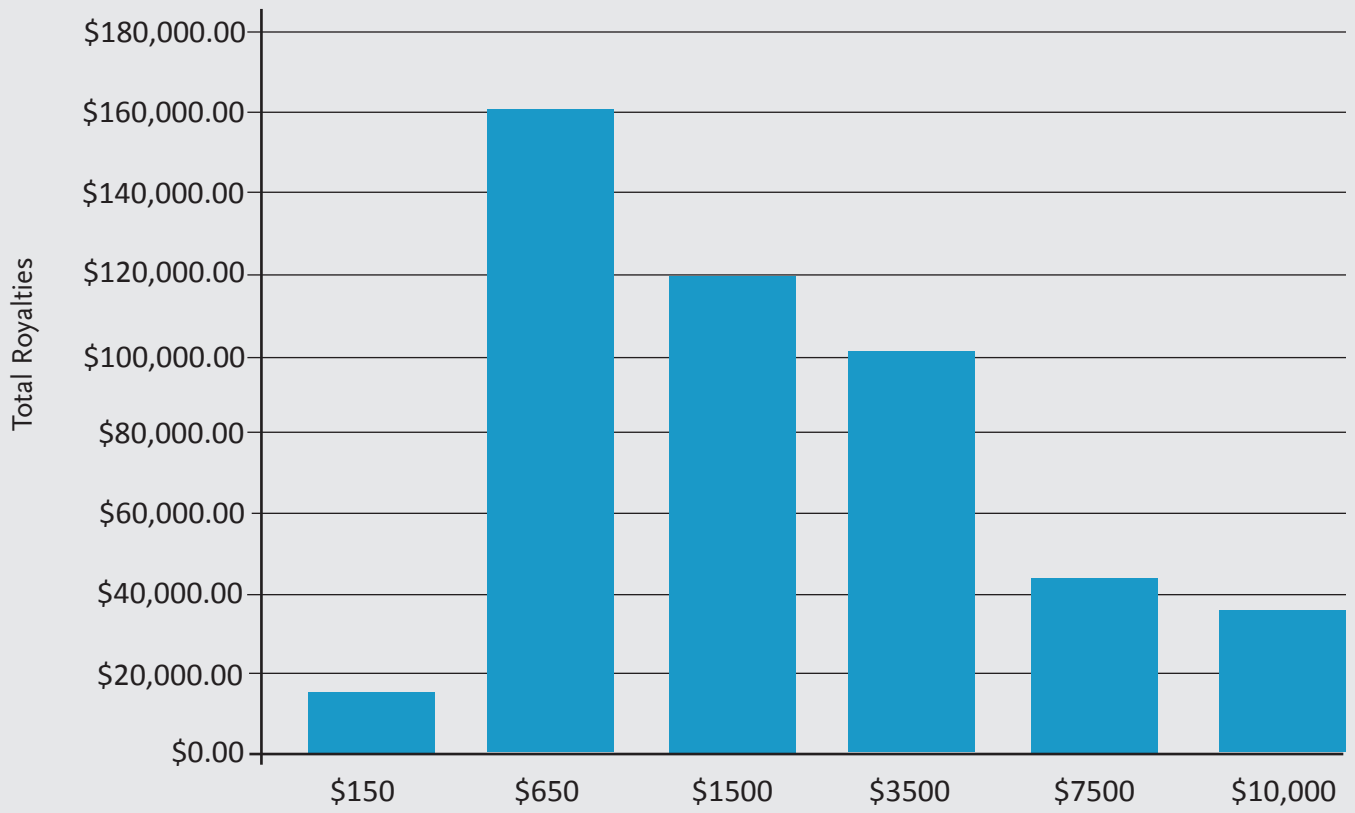
If you know it, what was your total payment from Access Copyright in 2012?

A far greater number of writers receive payments through collective licensing than do through direct payments. What's more, those receiving collective licensing payments are earning more revenue than those receiving direct payments. Of the 534 respondents answering this question, fully 497 of them recorded a collective payment amount for educational copying – 236 more than those recording direct payments. The majority of those amounts are in the \$650 range, and many more writers received amounts higher than \$650 through collective licensing than through direct payments – 124 writers received greater than \$1000, including 31 who received more than \$2000, 7 who received more than \$5000 and 4 who received more than \$10,000.

The total amount across all answers on this question came to \$505,950, which is \$418,400 more than the total for direct payments. As both direct payment and collective licensing for copying account for actual use, these results strongly suggest that collective licensing is an extremely efficient mechanism for making sure writers are properly compensated when their work is copied and used in schools.

The median payment from collective licensing, as recorded in these answers came to \$350 per writer, with an average of \$1018.^{xi}

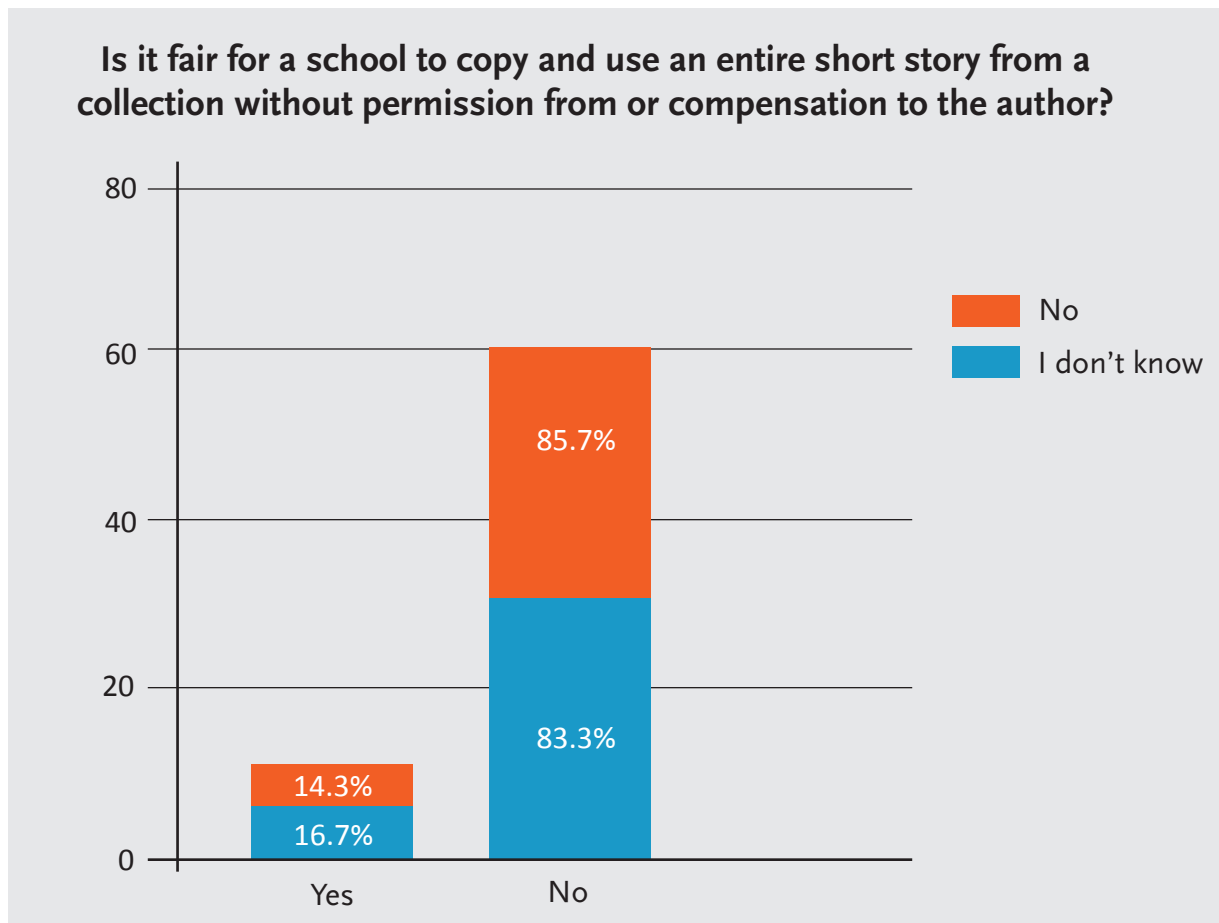
Individual AC Royalties 2012



THE INFLUENCE OF ACTIVISM

One might assume that those writers who have actively affiliated themselves with collective licensing in Canada would be markedly more inclined to consider substantial copying without compensation to be unfair – after all, they are more aware of income owed to them, and the potential for its loss. Yet, when the results for question #19 (about the use of an entire short story) is cross-tabulated to remove all of those respondents actively affiliated with Access Copyright, the results show a compelling sameness with the overall results.

83% of those indicating they are not affiliated with collective licensing still believe the copying of an entire short story is unfair, while 86% of those who are unaware of potential affiliation also believe it is unfair. This result suggests the presence of potential income is not the sole deciding factor in a fairness analysis for writers. There is something that seems simply unfair about the practice of copying an entire work – and a short story, poem, article or chapter is an entire work to the writer who created it – regardless of any active affiliation with revenue collection mechanisms.



METHODOLOGY

The survey was distributed to every member of The Writers' Union of Canada (2,000 professional book authors across Canada) through an e-mailed bulletin on April 30, 2013. A reminder bulletin was sent four days later. The survey was closed on May 10, 2013.

634 individuals started the survey, and 581 completed it (a 91.6% completion rate). In analyzing the results, we chose to look at only completed responses. At 581 completions, the total response rate for the survey was 29.05%, considered very good to excellent for both comprehensiveness and accuracy.

The survey questions were designed by TWUC staff in consultation with select members of the TWUC National Council. The stated purpose of the survey was, simply, to gather the opinions of a representative sample of TWUC's membership on various recent questions surrounding fair dealing in the educational context. Respondents were not pre-screened or given any specific answer information ahead of completing the survey. The survey began with this factual introduction:

Hello fellow Canadian writer!

The Writers' Union of Canada (TWUC) has been very actively involved in the discussion around copyright reform in Canada, and we have been closely watching developments since the passage of last year's Copyright Modernization Act (Bill C-11). Our primary concerns with ongoing reform are the definition and interpretation of the word "education" as a category of fair dealing, and the question of what constitutes a "short excerpt" for those wishing to copy work without permission or payment.

Recently, educational groups have insisted that a consensus has been reached on copyright and fair dealing but, as far as we know, no-one asked writers to contribute to this consensus. As we will be speaking on behalf of our membership on this issue, we would like to gather your opinions. Please take the time to answer these few simple questions. As much as possible, we have tried to make this survey Yes/No, with the option for you to add further thoughts and/or to expand on your answer.

For the purposes of analyzing the data, certain financial information (such as royalty earnings) was recoded to the midpoint of the range of each response category. For example, if the response category was \$0 to \$299, the code for that category was replaced with a value of \$150. While this gives rough estimates, it also allows for graphical display of trends over time.

ENDNOTES

- i. Samuel Trosow, "Fair Dealing Practices in the Post-secondary education sector after the Pentalogy," in The Copyright Pentalogy: How the Supreme Court of Canada Shook the Foundations of Canadian Copyright Law, edited by Michael Geist. See also, Michael Geist, "Fair Dealing Consensus Emerges Within Canadian Educational Community," <http://www.michaelgeist.ca/content/view/6698/125/>
- ii. Fair Dealing Guidelines for York Faculty and Staff (11/13/12) <http://copyright.info.yorku.ca/fair-dealing-requirements-for-york-faculty-and-staff/>
- iii. Berne Convention http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html
- iv. A small number of survey respondents took the opportunity of the comment boxes to complain that the questions in the survey were too simple or too confining, suggesting the issues are far too complex to be distilled into a yes/no binary. TWUC agrees the issues are complex and nuanced. Surveys are blunt tools, and the questions in this survey were certainly not attempting to lead to an involved and multifarious plan for moving forward. These were simple questions asking for simple answers with the aim of finding an honest starting point.
- v. *Forward, Together*, survey following the launch of TWUC's 2011-13 Strategic Plan. This survey also revealed that the top 3 advocacy concerns of Canadian book authors are (in order), copyright, Canadian books in schools and libraries, and fair contracts (including e-rights).
- vi. Canadian Professional Writers Survey, May 2006, from the Professional Writers Association of Canada, <http://www.pwac.ca/files/PDF/PWACsurvey.pdf>
- vii. Statistics Canada, <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/famil108c-eng.htm>
- viii. From Access Copyright's 2012 Annual Report, http://www.accesscopyright.ca/media/35847/ar2012_final.pdf
- ix. Adapted from Access Copyright's Copying Guidelines at <http://www.accesscopyright.ca/educators/copying-guidelines-for-elementary-and-secondary-schools-2010-2012/>

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- x. The average per writer was \$335, but this was felt to be less accurate given the overwhelming number of writers in the lowest revenue category.
 - xi. By comparison, the median payment per writer for the Public Lending Right (PLR) is \$282. The PLR is a compensation mechanism for writers when their work is made available through public libraries. It tracks the existence of work in library systems across the country but, significantly, does not track actual borrowing. Public Lending Right Commission Annual Report, 2010-11, http://www.plr-dpp.ca/PLR/about/annual_reports/documents/PLR_Annual_Report_final_000.pdf