

IS THE WRITING COMMUNITY UNDER SIEGE?

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Is the writing community under siege?

If the idiom means “facing increasing pressure or difficulty” or “a series of illnesses, trouble, or annoyance besetting a person or group,” then yes, it is.

In an early “Write/Right” column (*WestWord*, January–March 2018), you read about the 2012 *Copyright Modernization Act*. The Conservative federal government added “educational purposes” to the list of permissible fair dealing copyright exceptions—despite active opposition by creator coalitions and their startlingly accurate predictions of writer income decline and Canadian publishing industry erosion.

As a result of the new fair dealing exception of educational purposes, universities and other educational bodies stopped paying license fees to the national copyright collective—Access Copyright—for writers, artists and publishers. If Access Copyright doesn’t collect license fees from educational institutions, then Access Copyright can’t pass that revenue to its writer and publisher members.

Those same educational institutions not only stopped paying license fees, but they also began adopting their own fair dealing guidelines, interpreting the new exception so broadly they are conveniently able to use vast quantities of literary work without permission or payment. In 2013, Access Copyright sued York University, in Toronto, and won. The court said the guidelines were arbitrary and not based on sound principle. “It is evident that York created the guidelines and operated under them primarily to obtain for free that which they had previously paid for.” York appealed the 2018 Federal Court decision. The Federal Court of Appeal heard arguments in early 2019 about the thresholds

of infringement, but a decision is not expected for another 6–12 months.

Just to raise the stakes in this copyright battle, in early 2018, all Ontario school boards, and most provincial ministries of education (including Alberta’s) sued Access Copyright for the return of “overpaid fees.” Access Copyright, with its now significantly reduced resources, is forced to defend another lawsuit.

The next blow to the writing community came from another corner. The San Francisco-based non-profit Internet Archive’s goal “to make all the published words of humankind available to everyone in the world” apparently began with scanning and digital “lending” of only public domain books—literary work no longer covered by copyright. But then Internet Archive began a new project called “Open Library,” which seeks to create a record of *all* books in print, ignoring the inconvenient cornerstone principle of international copyright law (for the period of copyright, only the creator has the right to copy the work). Despite its lofty vision, specifically referring to author participation, and although its methodology is labelled “Controlled Digital Lending,” Internet Archive does not seek author permission, nor does it seriously consider creators’ control over their work. The project has been widely denounced. Writer organizations raising the piracy outcry include the U.S.-based National Writers Union and Authors Guild, The Writers’ Union of Canada and the Canadian Authors Association.

Closer to home is Ebook Bike, which labels itself “proudly Canadian.” The business claims to be a group book-sharing effort, allowing anyone to upload any book, even if



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in copyright, and to freely download it. Like Internet Archive, seeking author permission does not appear to be among Ebook Bike’s governing principles. Its idea of sharing is spreading property belonging to others, without asking. The analogy to Robin Hood, who stole from the rich to give to the poor, is inapt. Writers are paid poorly. Travis McCrea, Ebook Bike’s Vancouver-based founder, is the former leader of the Pirate Party of Canada; he openly encourages a copyright infringement lawsuit against Ebook Bike, but who has the financial resources to sue him?

Beset by the federal government, educational institutions, provincial ministries of education, non-profits, and even self-proclaimed pirates, the writing community is indeed under siege. However, there is a recent encouragement.

The 2012 *Copyright Modernization Act* contained a mandatory review process, which took place 2017/18. After listening to 209 witnesses, and receiving 192 briefs and more than 6,000 emails, Canadian Heritage, the first of two standing committees, has issued its report (available online: ourcommons.ca/DocumentViewer/en/42-1/CHPC/report-19/).

The report's 22 recommendations to the Government of Canada include the following:

Recommendation 1—That the Government of Canada increase its support for creators and creative industries in adapting to new digital markets.

Recommendation 6—That the Government of Canada increase its efforts to combat piracy and enforce copyright.

Recommendation 18—That the Government of Canada amend the Act to clarify that fair dealing should not apply to educational institutions when the work is commercially available.

Recommendation 19—That the Government of Canada promote a return to licensing through collective societies.

Another report resulting from the statutory review, issued by the Standing Committee on Industry, Science and Technology, is expected soon. Whether its recommendations will herald similar heartening news for writers is uncertain. Further, whether the federal government will take concrete, positive steps that benefit writers before summer recess and then an anticipated fall election is doubtful. Nevertheless, in a state of siege, any ray of hope is welcome. ■

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BOOK PIRACY: WHAT CAN YOU DO?

- Sign the U.S. Authors Guild's Open Letter to Internet Archive and Other Proponents of "Controlled Digital Lending." form.jotform.com/90035152846151
- If your work appears on a pirate site, send a letter to the website demanding the removal of your work. A letter template is available from Access Copyright. accesscopyright.ca/media/news/Unauthorized-posting-of-ebooks-on-ebookbike-website/
- Inform the Canadian Authors Association of the infringement—it is keeping statistics. apurcell@canadianauthors.org
- If friends or family members download titles from Open Library or Ebook Bike, explain to them how they're aiding in stealing from creators.

About the Heritage Canada Standing Committee's report

Contact your MP to praise the report's above recommendations and urge your representative to implement them and keep the issues on the parliamentary agenda.



Monday Write Nights at EPL

Join us this summer for our Monday Write Nights, 7pm at the following Edmonton Public Library branches!

- July 8 – Highlands
- July 22 – Woodcroft
- August 12 – Idylwyld
- August 26 – Highlands

Fall schedule coming soon!

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