

# Myth: Fair use decimated educational publishing in Canada

Copyright Agency and other rights holder groups have claimed - falsely - that fair use has decimated the Canadian educational publishing industry. They warn that the same would happen in Australia. This myth really needs to be called out. It is completely without foundation.

<b>True</b>	In 2012 Canada enacted copyright reforms that have permitted Canadian schools to use small amounts of works for educational purposes without payment. The Canadian fair dealing for education exception operates like fair use.
<b>True</b>	Some Canadian educational publishers are struggling and some multinational publishing companies have ceased operating in Canada.
<b>False</b>	The two developments above are causally linked.

There is no denying that there are disruptions affecting Canadian educational publishers. They include:

- An increasing use of open access resources by Canadian schools. A report by PriceWaterhouseCoopers that was commissioned by the Association of Canadian Publishers (ACP)<sup>1</sup> listed publicly funded, open access educational content as “threat” to the Canadian publishing industry “as they provide textbooks and course materials for free”.
- Canadian students increasingly opting for second hand textbooks. The ACP has actually complained about this to university books shops, suggesting that Canadian students “deserve the choice of purchasing new books”.<sup>2</sup> The publishers appear to think that Canadian students should be “doing their bit” to ensure the continued profitability of large academic presses by forgoing the opportunity to save money by opting for dog-eared second hand books.
- A transition from traditional print books to digital products. PWC reported that “media players such as Apple and Google” are emerging as a new source of disruption for Canadian educational publishers by “seeking to introduce new business models and alternative content distribution channels.”<sup>3</sup>

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<sup>1</sup> [http://www.accesscopyright.ca/media/94983/access\\_copyright\\_report.pdf](http://www.accesscopyright.ca/media/94983/access_copyright_report.pdf) p 51

<sup>2</sup> <http://publishers.ca/images/downloads/ACP-HigherEdCttee-OpenLetter-NewTexts.pdf>

<sup>3</sup> [http://www.accesscopyright.ca/media/94983/access\\_copyright\\_report.pdf](http://www.accesscopyright.ca/media/94983/access_copyright_report.pdf) p 51



These forces were at play **well before** the 2012 Canadian copyright reforms and have absolutely nothing to do with copyright.

There has been a troubling willingness on the part of rights holders and their representatives to present a very distorted picture to Australian policy makers as to the true impact of Canadian copyright reforms on that country's educational publishing market.

In its 2013/2014 Annual Report, Oxford University Press (**OUP**) says that its decision to wind back its schools division in Canada followed "*a decade-long decline in the Canadian market for educational resources during which purchases of materials have fallen by nearly 50 per cent.*" There is no mention of copyright reform. Why, then, did OUP tell the Australian Productivity Commission that the most significant reason that it ceased publishing in its schools divisions in Canada was "the loss of licensing income" from Access Copyright.

Similarly, OUP has asserted that the 2012 copyright reforms were the reason that Canadian educational publisher Nelson Education Ltd failed. And yet, an affidavit filed by Nelson's CEO in what were effectively bankruptcy proceedings, the company lists reduced spending on new curriculum by Canadian schools, increasing use of open education resources, the use of used textbooks, and the transition from traditional print books to digital products (which is said to be "having a transformative effect on the business") as matters that negatively impacted on the company's ability to remain profitable.

The numbers tell the story very clearly:

#### **Amount paid to Access Copyright for copying of works by Canadian schools<sup>4</sup>**

2008	\$28 million
2009	\$24 million
2010	\$16 million
2011	\$17 million
2012	\$18 million
2013	\$13 million
2014	\$10 million
2015	\$ 8 million

Rights holders are asking policymakers to ignore the disruptions that we've set out above - ie open access publishing, student preferences for second-hand books, reduced spending on new curriculum, new media players such as Google and Apple - and simply take their word for it that any financial difficulties that Canadian publishers claim to be experiencing can be sheeted home solely to the 2012 copyright reforms. As the table above shows, these claims are completely without foundation.

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<sup>4</sup> PwC, Economic Impacts of the Canadian Educational Sector's Fair Dealing Guidelines, 2015, p 43 [http://www.accesscopyright.ca/media/94983/access\\_copyright\\_report.pdf](http://www.accesscopyright.ca/media/94983/access_copyright_report.pdf)

