

Separating Canadian Copyright Myths from Reality

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What is going on in
Canada?

2012 Copyright Reform

- Copyright Modernization Act (CMA)
 - Expansion of fair dealing
 - Format shifting (reproduction for private purposes)
 - Time shifting
 - Backup Copies
 - Non-commercial User Generated Content
 - Publicly Available Materials on the Internet
 - Distance education
 - Digital Inter-Library Loans
 - Anti-circumvention rules (DMCA-style)
 - Enabler provision
 - ISP liability (notice-and-notice)
 - Statutory damages
- Supreme Court Copyright Pentalogy
 - user's rights
 - balance
 - fair dealing – research, private study
 - Technological neutrality

2012-2019

- Fair Dealing cases
 - York University v. Access Copyright
 - Blacklock's Reporter
 - Vancouver Aquarium
 - Room Full of Spoons
- Copyright cases
 - SODRAC (tech neutrality)
 - Keatley (crown copyright)
 - Voltage (ISPs)
- Copyright Board reform
- Term Extension for sound recordings
- Notice-and-Notice Reform
- Marrakesh Treaty
- CPTPP

Myth #1

Canada Remains a “Safe Haven” for Online Piracy, Rightsholders Claim

BY ERNESTO ON FEBRUARY 14, 2017

C: 90

The MPAA, RIAA and other entertainment industry groups are calling out Canada, claiming that it remains a "safe haven" for copyright infringers and pirate sites. The new "notice and notice" system is ineffective, they say, and the broader legal copyright regime fails to deter piracy.

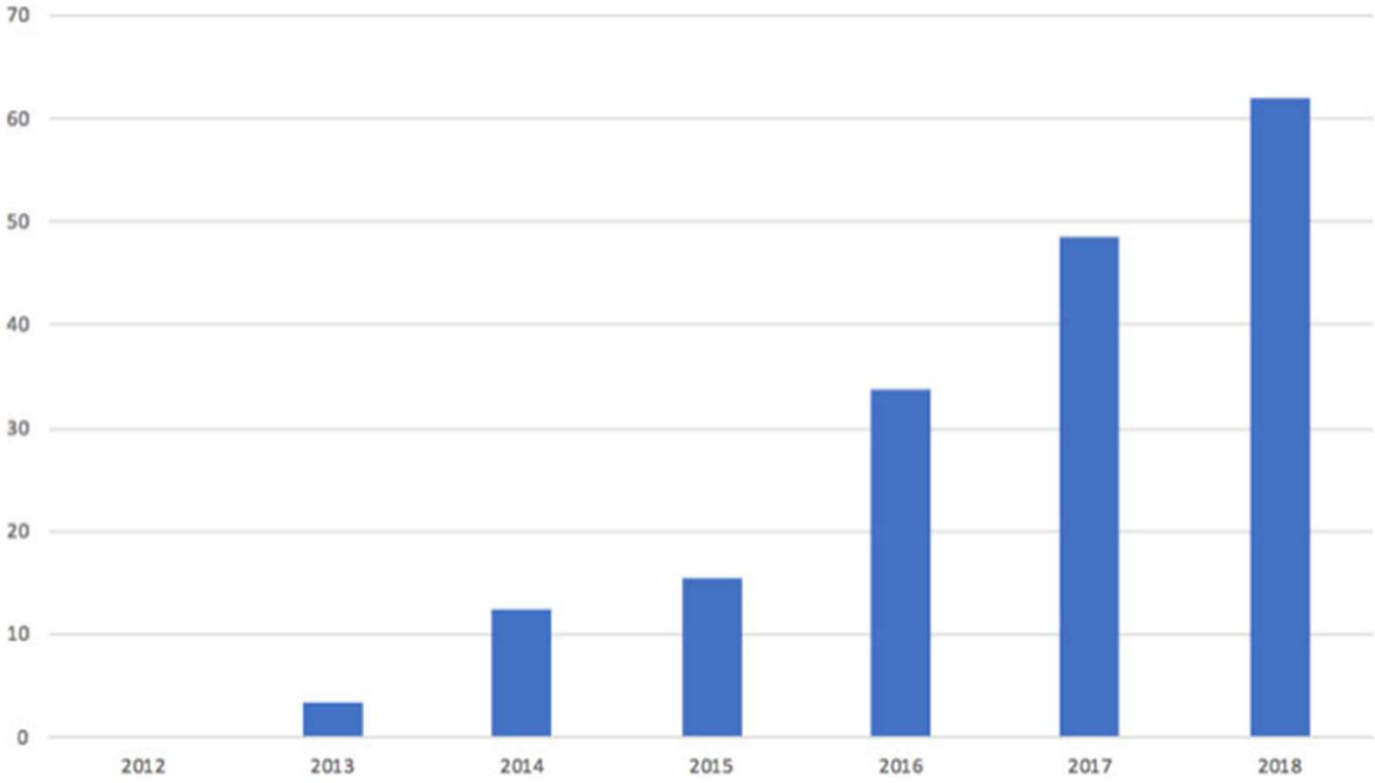
The International Intellectual Property Alliance ([IIPA](#)) has released its latest 301 'watch list' submission to the U.S. Government.

The IIPA, which includes a wide range of copyright



Reality

SOCAN Canadian Internet Streaming Revenues (millions): 2012-2018



SOCAN Internet streaming revenues, socan.ca



the television will not be... by aesthetics of crisis (CC BY-NC-SA 2.0) <https://flic.kr/p/dT9oyX>

News

Canada's Tough Anti-Piracy Copyright Law: Federal Court Awards Millions in Damages Against Unauthorized Streaming Site

April 16, 2018 — [Edit](#)

CRTC rejects proposed website-blocking scheme to fight online piracy

The organization favours ongoing reviews of copyright, broadcasting and telecommunications legislation



Myth #2

UGC Exception Leads to Uncertainty

What about the Canadian UGC precedent? It was introduced in the midst of a controversial updating of an outdated Copyright Act whose revision had been delayed several times by a change of government and a succession of minority governments. The new legislation, Bill C-11 or the Copyright Modernization Act (2012), closed a number of loopholes in Canadian law that had allowed Canada to become a location of choice for online pirates but at the same time it expanded the exceptions to infringement to include, among others, a new section of the Act (Section 29.21) that created an exception for content generated by non-commercial users (known as the “UGC” or “mash-up exception”). Under this exception, a consumer has the right to use, in a non-commercial context, a publicly available work in order to create a new work. The exception is subject to conditions, namely the identification of the source, the legality of the work or the copy used, and the absence of a substantial adverse effect on the exploitation of the original work. According to anecdotal reports, the exception was introduced to satisfy demands from some Members of Parliament that personal wedding videos containing background copyrighted music not be deemed infringing. While that intent may be understandable, a

Reality



Początek marszu by Piotr Drabik (CC BY 2.0) <https://flic.kr/p/ocTafz>

News

Canada's Non-Commercial Copyright Fail: Why Did YouTube Mute a Holocaust Memorial Video?

April 15, 2015 — [Edit](#)

Myth #3

Canada Prohibits Piracy Settlement Demands in ISP Copyright Notices

BY **ANDY** ON **DECEMBER 18, 2018**

C: **13**

The rules for Canada's notice-and-notice regime will change following the passing of C-86, the Budget Implementation Act. Moving forward, rightsholders will not be allowed to send copyright infringement notices for ISPs to pass onto their customers, if they contain a direct or indirect offer to settle. The development effectively ends Rightscorp-style business models in Canada.

Reality

Canada's New Anti-Abuse Copyright Notice Rules Are Being Ignored

BY ANDY ON MARCH 7, 2019

C: 34

Last December, Canada amended its Copyright Act to prevent abuse of the notice-and-notice regime. As a result, copyright holders are no longer allowed to demand cash in infringement notices and ISPs aren't obliged to pass them on. Sadly, the rules are being ignored.

When Internet users download or share copyrighted content online, particularly using BitTorrent, they should presume that copyright holders are watching.

Transfers that take place without the protection of a VPN, for example, are easily traced back to ISPs, who have the ability to link that activity to a specific



Myth #4

When Copyright Protections Are Weakened: Canada's Warning for Australia



In News by Porter Anderson / April 21, 2016



As Australia's Productivity Commission reviews the country's intellectual property arrangements, Copyright Clearance Center's Roy Kaufman says Canberra needs to heed Ottawa's warning.

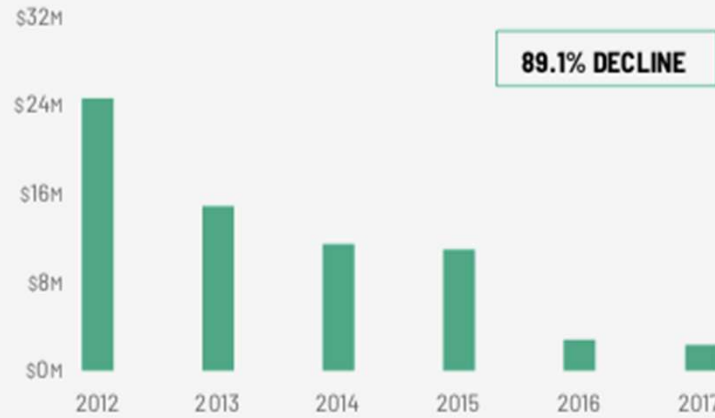
Reality

Three Trends

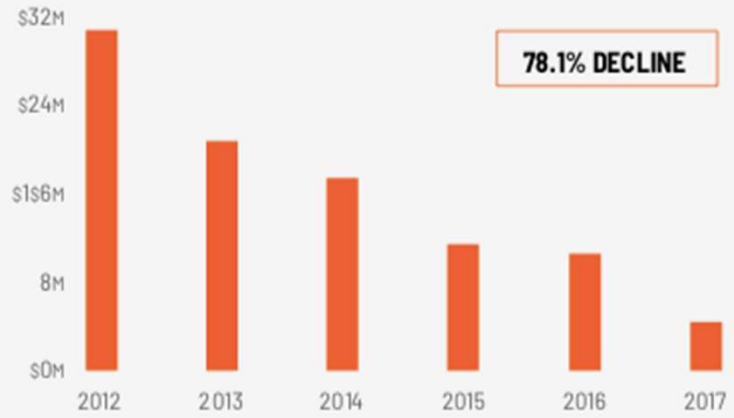
Copyright Collective Revenues Have Declined

CHARTING THE IMPACT OF EDUCATION SECTOR COPYING POLICIES (2012-2017)

EDUCATION REVENUES



TOTAL DISTRIBUTIONS*

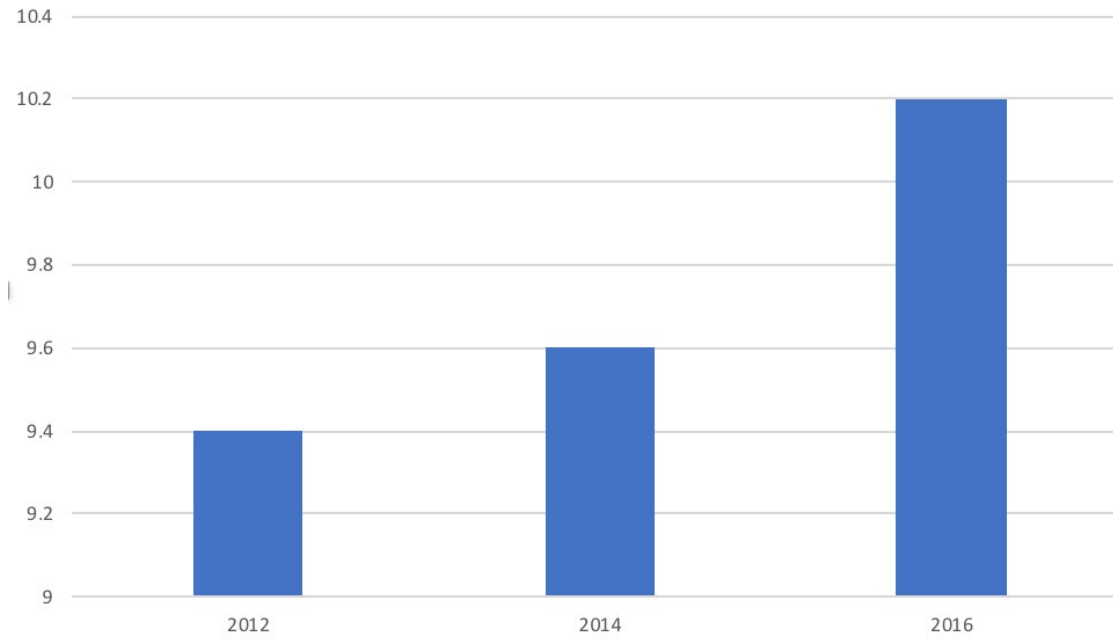


Revenue and distribution totals do not include retroactive 2005-2009 K-12 Tariff royalties recognized in 2012 and 2013.

* Total distributions from royalties collected from all sectors.

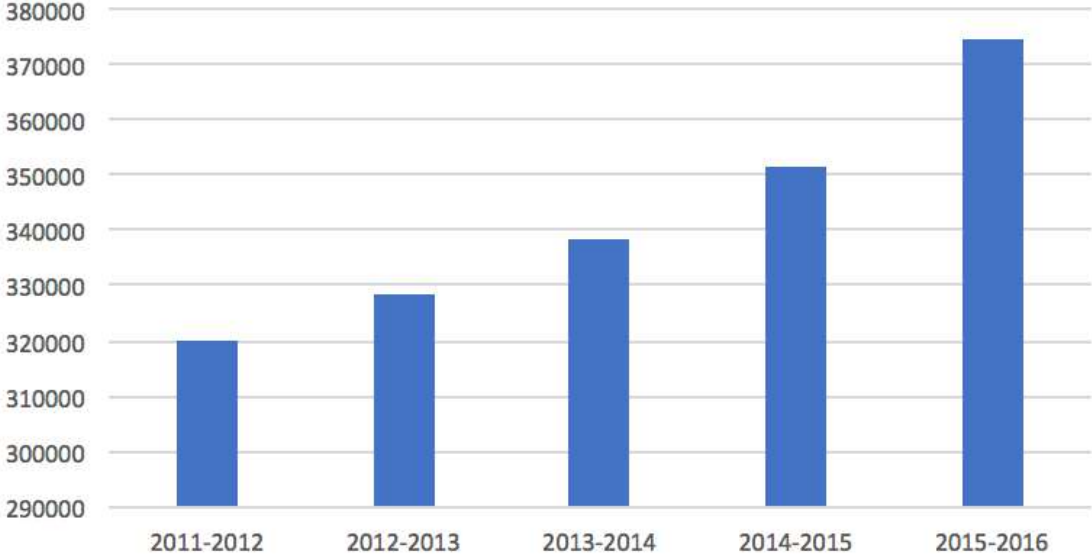
Publisher Profit Margins
Have Increased

Canadian Publisher Profit Margins - Statistics Canada



Education Spending More on Licensing

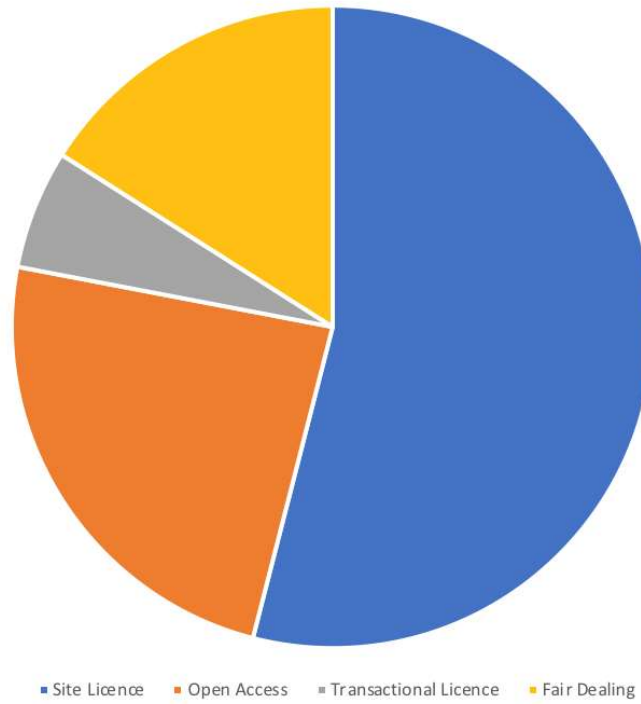
Library Acquisitions (Statistics Canada, 2017)



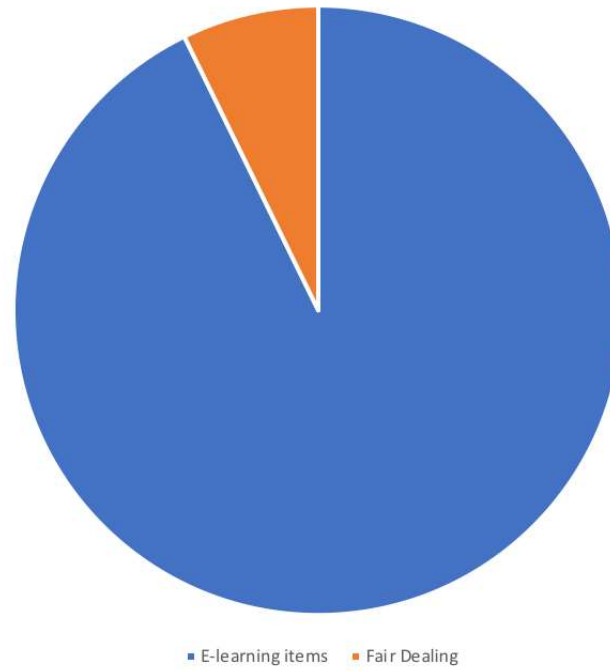
How to Reconcile?

Fair dealing is a small part
of the permission puzzle

Course E-Reserves - University of Guelph



University of Calgary - Survey of E-Learning Materials



Copying data is outdated

Over the past six years, creators and publishers have found their ability to make a living under threat as a result of the education sector interpretation of “education” as an allowable purpose under fair dealing.

When this amendment was under discussion, the education sector assured Canadian writers, visual artists and publishers they had nothing to be worried about and that these changes would not bear a negative impact on their income.

But once the *Copyright Modernization Act* came into effect in November 2012, ministries of education and post-secondary institutions walked away from long-standing licensing agreements and implemented copying policies that have had a staggering impact on the income level of creators and publishers.

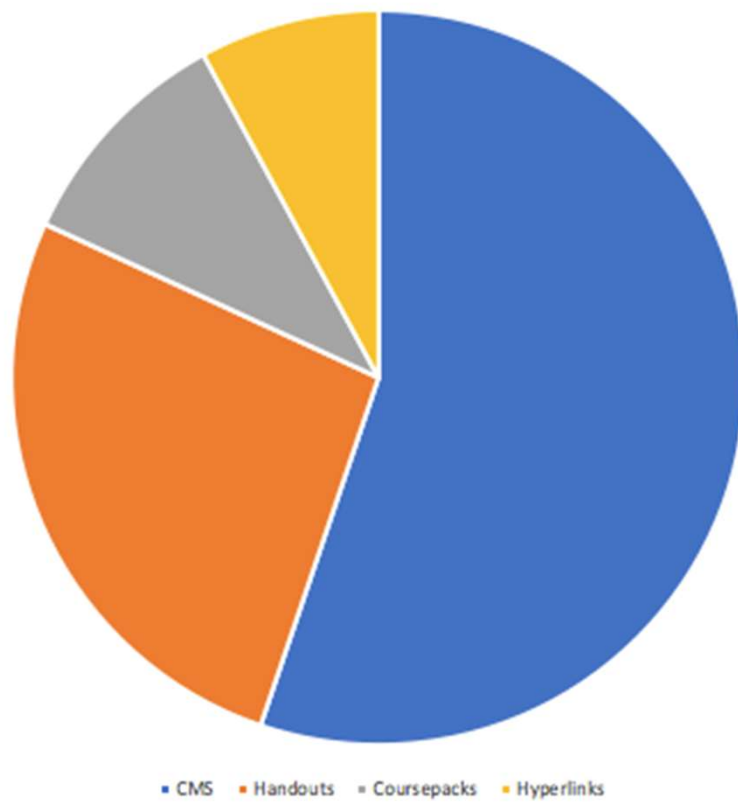
Creators and publishers immediately felt the impact of lost licensing royalties. Historically, these royalties have represented 20% of creator income^[1] and 16% of profits for Canadian publishers^[2]. Today, royalties to creators and publishers for the copying for their works have declined by approximately 80% since 2012^[3]. The impact on creators and publishers is even greater when you consider the ripple effect that free copying has on primary sales.^[4] The issue is that this has created a Value Gap for Canadian creators and publishers with over 600 million pages of published materials copied each year by educational institutions without payment.

Canadian creators and publishers shouldn't be forced to subsidize the education system.

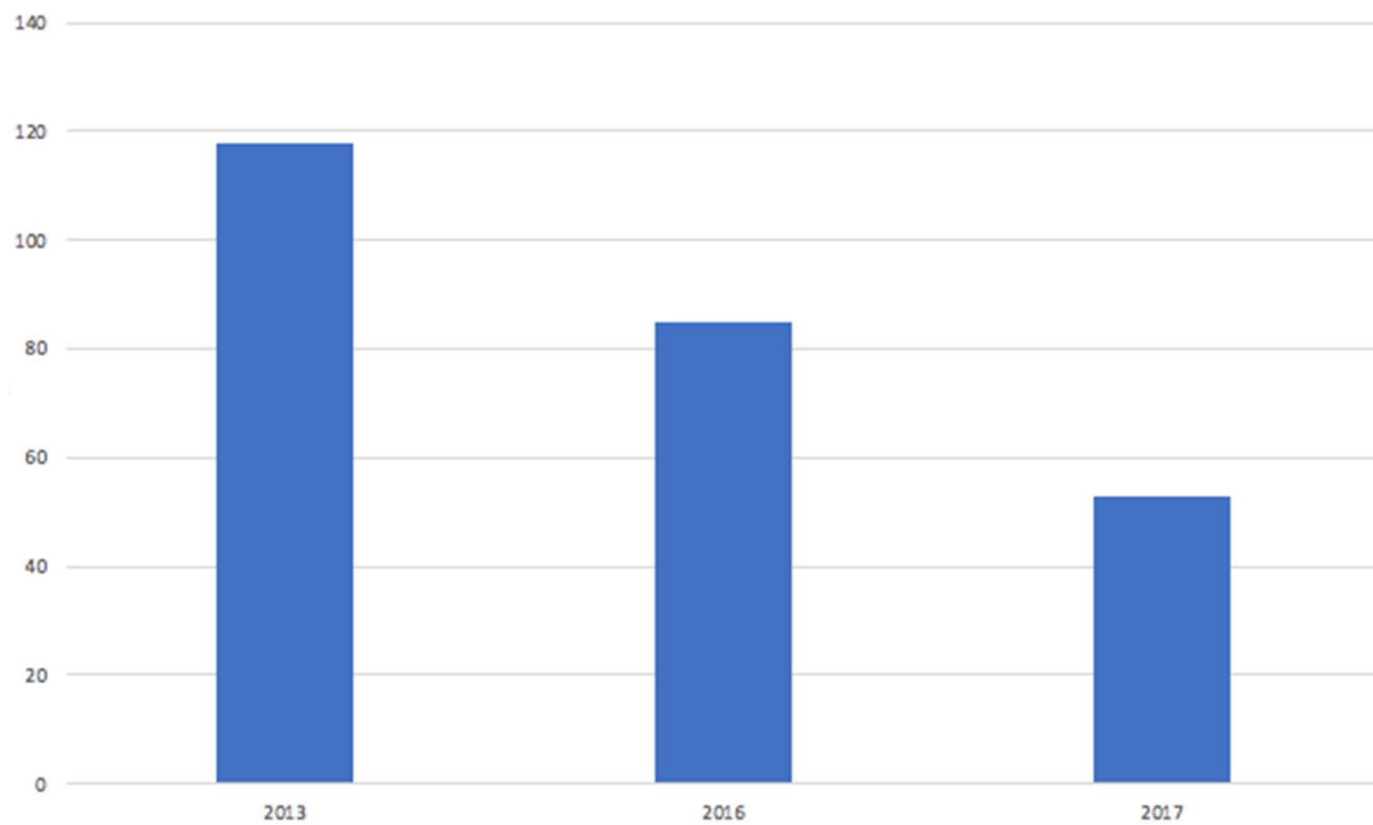
600 million copy claim
relies on pre-2012 data

The Digital Shift

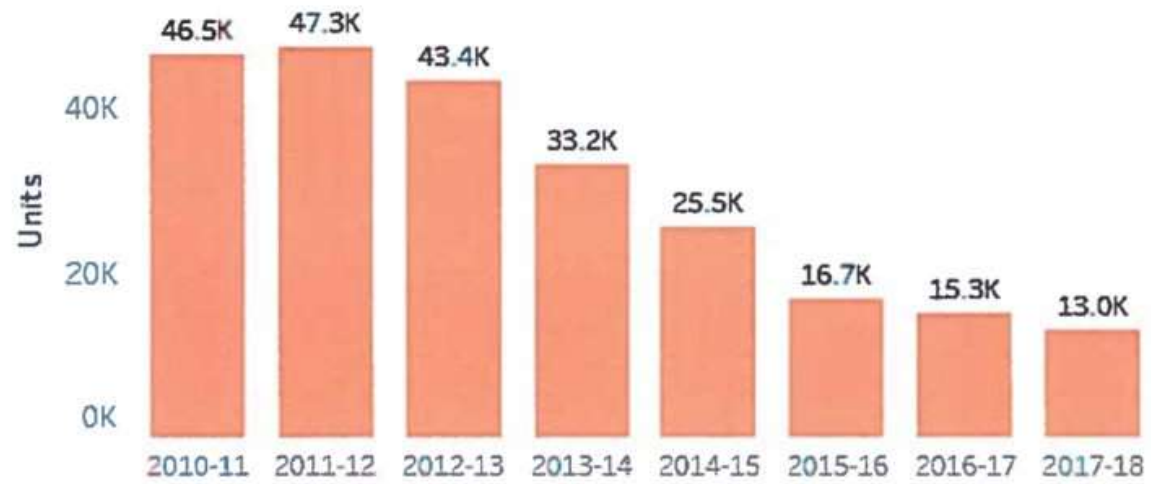
Access Copyright Study: College Copying



University of Calgary - Coursepacks



Bookstore custom course pack sales by fiscal year - units



UBC Coursepack sales

3

The shift towards purchasing digital content: One university's experience



2002/03

21%

79%

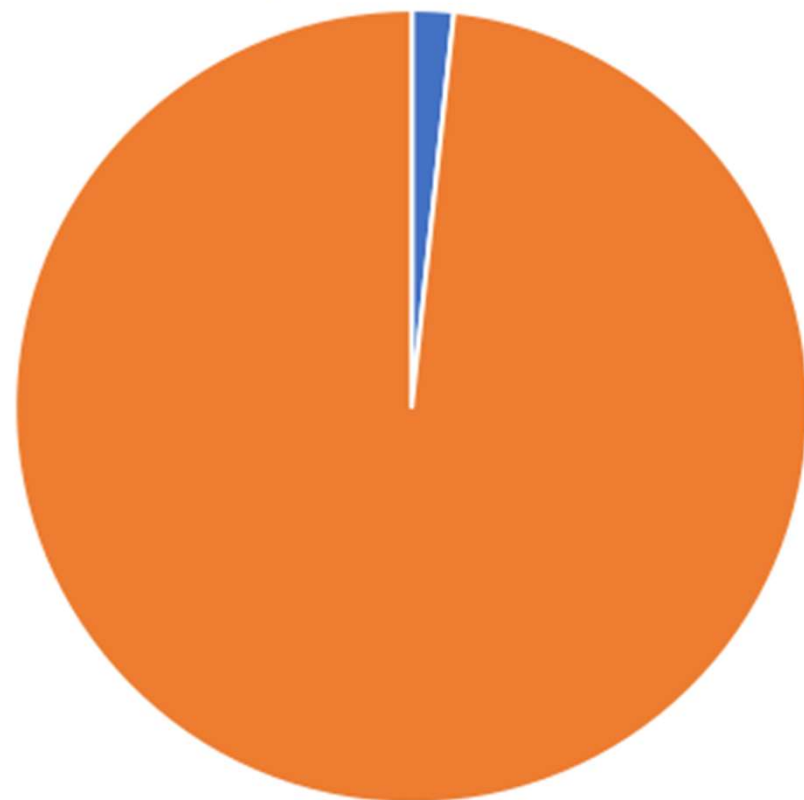


2015/16

81%

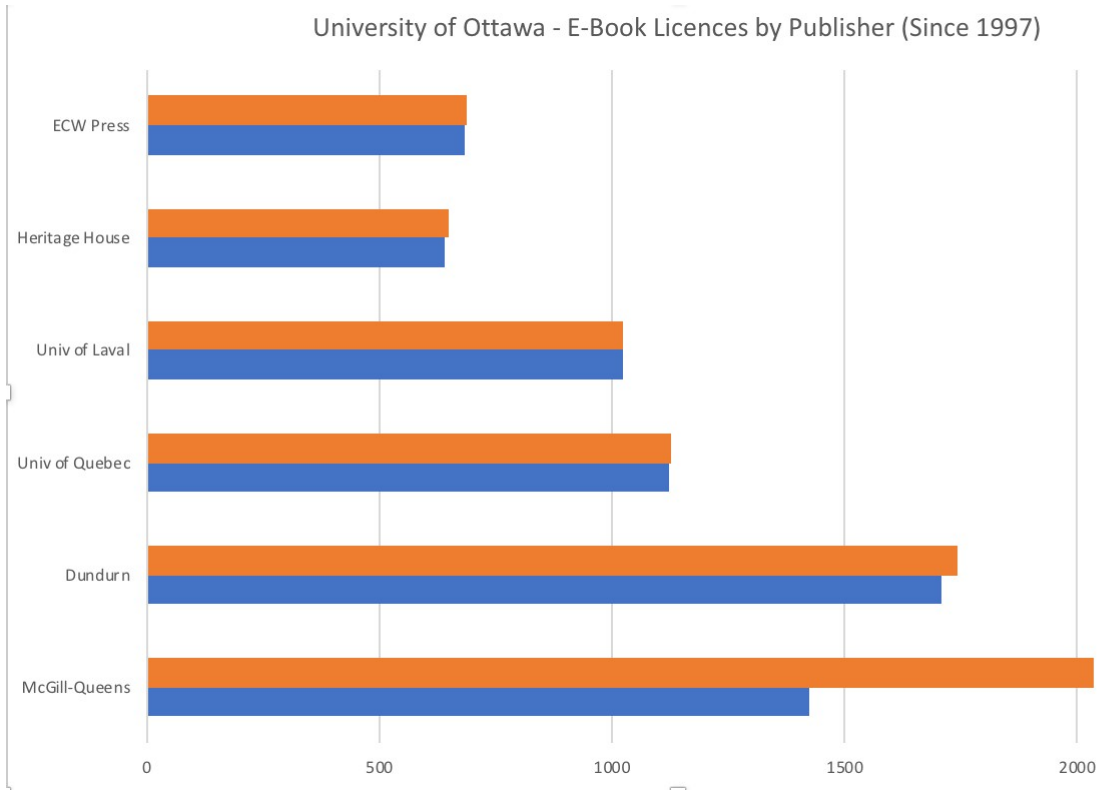
19%

University of Lethbridge - CMS



■ Collective Licence Implication ■ No Collective Licence Required

University of Ottawa - E-Book Licences by Publisher (Since 1997)



“A transactional license for two chapters of Oil: a Beginner’s Guide (2008) by Vaclav Smil for a class of 410 students would cost the library \$2,463 USD. An unlimited license for the eBook version is \$29.90 USD, and the book would be available to all library users.

A transactional license for two chapters from the print book version of Negotiating a Vacant Lot: Studying the Visual in Canada (2014) by Lynda Jessop et al. for a class of 60 students is \$414 CAD, while an unlimited license for the eBook version is \$150 USD.

University of Calgary

the University of Toronto said it paid more than \$285,000 on transactional licences in the last academic year

Ryerson University said it spends more than \$150,000 on transactional licences annually

the University of Guelph spent \$100,000 on transactional licences in 2017-18

Concordia University, which pays the Copibec collective licence (the Quebec equivalent of Access Copyright), still spends an additional \$120,000 in transactional licensing costs

the University of Calgary spent \$96,149 on transactional licences, of which \$45,123 went toward materials in printed coursepacks and \$51,026 for materials posted to a CMS.

UBC spent \$113,409 on transactional licences for access and use of 780 items

What does the Canadian
experience teach?

Good policy is no guarantee

Fair dealing/use
co-exists with licensing

Access + Reproduction > Access

Current evidence $>$ Dated data

@mgeist