

# **SUBMISSION TO THE STANDING COMMITTEE ON INDUSTRY, SCIENCE AND TECHNOLOGY**

**FOR THE COMMITTEE'S STATUTORY REVIEW OF THE COPYRIGHT ACT**

**Submitted by Simon Fraser University**

**October 3, 2018**

## About Simon Fraser University

Simon Fraser University (SFU) is located in Burnaby, BC, with additional campuses in Vancouver and Surrey. SFU enrolls 30,000 students across its eight faculties, and the University employs 6500 academic and support staff, including 1100 instructors.<sup>1</sup> SFU is a comprehensive university (no medical or legal schools) and is consistently ranked as the top comprehensive university in Canada.<sup>2</sup>

SFU appreciates this opportunity to share its views on the effect of the *Copyright Act* and associated jurisprudence on our teaching and research mission.

## Types of copyright protected works used at SFU

The vast majority of works used by, and created by, instructors and researchers at SFU are scholarly works (e.g., academic journal articles and books), not creative literary works or trade publications. Academic authors write and create works for recognition and advancement of scholarship, rather than monetary reward—scholarly works are created as part of an academic author’s employment at a university or other institution. Writing and disseminating their work is an integral part of a researcher’s work, and is a major factor in promotion and tenure applications. Academic authors are interested in making their research and findings widely available and contributing to further work in their field. These authors usually assign copyright in their writings to publishers, for which they are not paid by the publishers and they do not receive royalties from sales or uses of their works. These authors rarely benefit from collective licensing agreements or tariffs.

The number of SFU courses requiring students to purchase creative literary works (i.e., novels, short stories, plays and poetry) as required or recommended course materials has increased slightly since 2011 (see graph below).<sup>3</sup> Consistently, nearly half of the courses requiring the purchase of these works are in the English department, where both enrollment and the number of course sections being offered have declined by more than

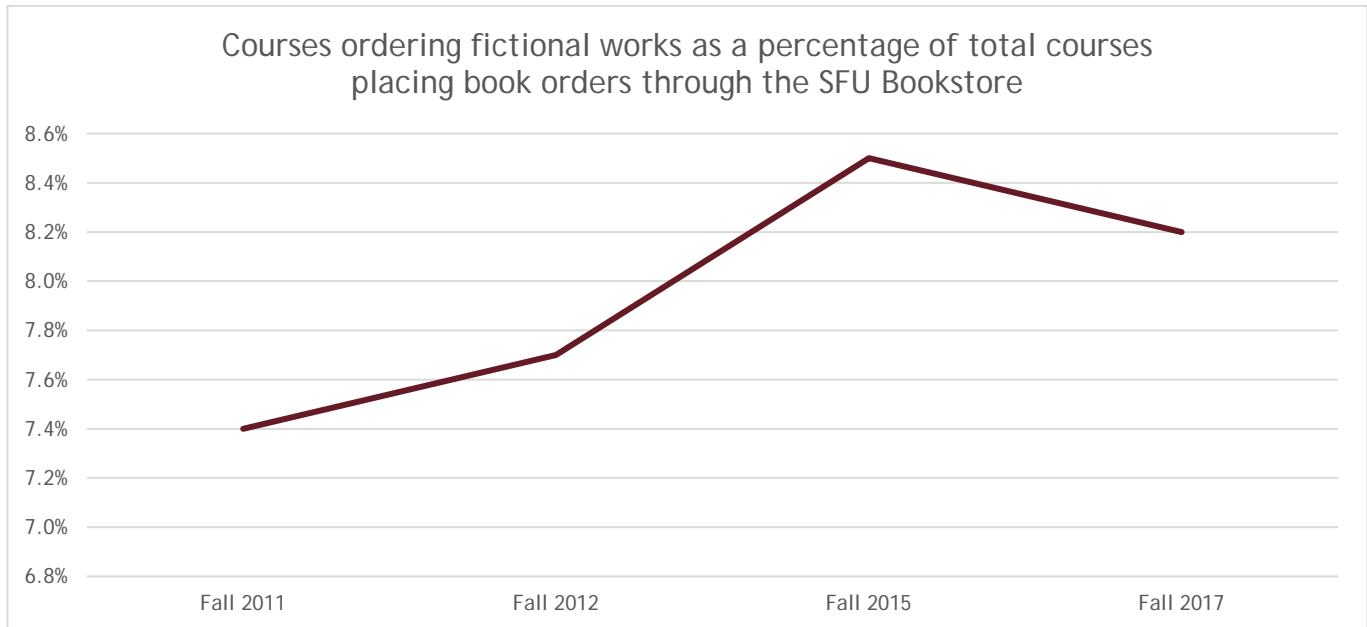
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<sup>1</sup> *About SFU*, available at <https://www.sfu.ca/about.html>.

<sup>2</sup> 2018 Maclean’s Rankings, available at <https://www.macleans.ca/education/university-rankings/top-comprehensive-2018-simon-fraser-university/>.

<sup>3</sup> SFU Bookstore stats, internal.

20% in this period.<sup>4</sup> These types of works typically need to be studied in whole, and are not being reproduced in excerpts at SFU under fair dealing or any license.



Based on SFU Bookstore data. "Fictional works" include novels, short stories, plays and poetry.

It should also be noted that a large percentage of the non-scholarly works used by instructors at SFU are non-textual (e.g., images, videos, websites),<sup>5</sup> and therefore not governed by collective licensing agreements or tariffs through literary collective societies such as Access Copyright. In most cases, fair dealing purposes and the Works Available Through the Internet provision (s 30.04) in the *Copyright Act* allow for these uses.

## The nature of SFU Library collections and sources of copyright protected works

Collections spending by the SFU Library increased by 30% from \$8.4m in 2010-11 to \$11m in 2016-17, and the number of items in our collection (print and electronic) has nearly doubled from 7.7 million works in 2010-11 to 14.2 million works in 2016-17.<sup>6</sup> More than 80% of current SFU Library collections expenditures are for digital resources, the use of

<sup>4</sup> See SFU Institutional Research and Planning stats, available at <http://www.sfu.ca/irp.html>.

<sup>5</sup> Based on regular samplings of content uploaded to SFU's learning management system by the SFU Copyright Office.

<sup>6</sup> See SFU Library Annual Reports, available at <https://www.lib.sfu.ca/about/overview/planning-reports>.

which is governed by licenses between SFU and vendors which, as detailed below, often include permission for instructors and researchers to make common educational uses of the content.

Aside from all of the Canadian content included in products produced by international publishers that the SFU Library purchases or subscribes to, fully \$500,000 goes directly to Canadian publishers through the Library's purchase of uniquely Canadian resources such as films, Canadian scholarly publications and books from Canadian publishing houses in both digital and physical formats.

The reproduction and use of copyright protected works by members of SFU is governed in many cases by licenses through journal package and database subscriptions held by the Library. These licenses may include permission to place content on e-reserve through the Library, reproduce content in a course pack (paper or digital), upload or link to it in the learning management system and share it with other institutions via interlibrary loan.<sup>7</sup> Where these permissions are included in a license, users are not relying on fair dealing or other *Copyright Act* exceptions. However, in some cases, these license terms can be more limiting than the rights available to users in the *Copyright Act*, and we recommend clarification that a contract cannot override a user's rights under fair dealing.

Tariffs applied without these licenses in mind cause double payment for content, through tariff fees in addition to subscription costs. We recommend that tariffs for use of literary works not be compulsory, and that collective societies governed by *Copyright Act* s 70.1 (e.g., Access Copyright), not be grouped with those governed by s 67 (e.g., SOCAN), to maintain for institutions a flexible variety of options for sourcing and licensing or purchasing of content.

SFU instructors are also using the increasing variety of freely available online sources instead of commercially published content. For example, much of the content on Canada's federal websites at [canada.gc.ca](http://canada.gc.ca) are usable for non-commercial purposes under that site's Terms & Conditions,<sup>8</sup> and much of the content produced by American federal agencies is

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<sup>7</sup> See for example license terms for Project MUSE Search, a "searchable, online, full-text collection of over 600 humanities and social science journals and e-books," available at <https://databases.lib.sfu.ca/record/61245131900003610>.

<sup>8</sup> See Government of Canada Terms and Conditions, available at <https://www.canada.ca/en/transparency/terms.html>.

released into the public domain.<sup>9</sup> Government works can provide educational and research material for a wide range of course subjects.

Many instructors at SFU use Open Access journals and books, which are openly licensed (e.g., under a Creative Commons license<sup>10</sup>) to permit a wide range of uses. SFU also encourages instructors to create, adapt and use Open Educational Resources (OERs), including textbooks, multimedia works, assessment tools and other course materials, which are also openly licensed. OERs are created by educators and made freely available to students and educators via the Internet. The SFU Library's OER Grants program has provided over 20 instructors with funding and support to create or adapt OERs for their courses, saving students \$413,000 in textbook costs in the first two years.<sup>11</sup> Creating OERs and using open textbooks dramatically reduce textbook costs to students and provide needed Canadian and local perspectives.

## The application of fair dealing at SFU

While many works are used and shared under the terms of a library subscription or an open license, fair dealing and other relevant *Copyright Act* exceptions are applied by instructors when suitable, following SFU's Fair Dealing Policy<sup>12</sup> and with support and guidance from the SFU Copyright Office. These policies arise from 2004 and 2012 Supreme Court of Canada rulings on fair dealing for the purpose of research, not from the addition of education as a fair dealing purpose in 2012. SFU instructors are making reasonable and responsible decisions about copying and distributing copyright protected excerpts to students, utilizing fair dealing and getting copyright clearance when fair dealing does not apply.<sup>13</sup>

Fair dealing for the purpose of education is important to students writing their theses, which at SFU and most other Canadian universities are made openly available online. The education purpose allows the student to include works such as images, charts or figures

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<sup>9</sup> See U.S. Government Works, available at <https://www.usa.gov/government-works>.

<sup>10</sup> See Licensing Considerations, available at <https://creativecommons.org/share-your-work/licensing-considerations/>.

<sup>11</sup> See First Year and Second Year Summary Reports, available at <https://www.sfu.ca/oergrants/tools-and-resources.html>.

<sup>12</sup> See SFU Policy R30.04, Appendix A "Application of Fair Dealing under Policy R30.04," available at [http://www.sfu.ca/content/dam/sfu/policies/files/research\\_policies/30\\_series/R30.04AppendixA.pdf](http://www.sfu.ca/content/dam/sfu/policies/files/research_policies/30_series/R30.04AppendixA.pdf).

<sup>13</sup> Based on findings of the Copyright Provision Recordkeeping Survey, detailed at <https://www.lib.sfu.ca/help/academic-integrity/copyright/recordkeeping-survey>.

that illuminate their argument and greatly assist the reader in understanding the thesis. These works could not be included under any other fair dealing purpose.

Fair dealing is also extremely useful for SFU researchers outside of the classroom. Without fair dealing for research or education, research projects such as text mining where Indigenous researchers scan and conduct text analysis of various works to research the colonial attitudes of Canadian writers to Indigenous peoples would be impossible. Fair dealing lets researchers use textual collections as data.

The facts detailed above demonstrate that SFU instructors and researchers are not using fair dealing and other copyright exceptions to avoid proper compensation to Canada's creative community. Meanwhile, the exceptions in Canada's *Copyright Act* benefit students by increasing the variety of sources and voices represented in educational materials. The responsible application of fair dealing and the other approaches described above have ensured that SFU is no longer paying twice for content that is licensed by the SFU Library.

## Copyright oversight at SFU

Planning for the establishment of the SFU Copyright Office was underway prior to 2012. The Copyright Office, staffed by the University Copyright Officer and a Copyright Specialist, was created to provide a centralized source of copyright information to faculty, staff and students. The Copyright Office works closely with the Library, University departments and administrative areas. A variety of copyright workshops, both general and customized for specific departments or groups, are provided multiple times per year, at all three campuses; 216 members of the SFU community attended workshops in 2017-18.<sup>14</sup> The website [copyright.sfu.ca](http://copyright.sfu.ca) contains educational videos, an online tutorial for students, FAQs, instructor resources and links to external resources. SFU's copyright and IP policies are clearly laid out on the copyright website<sup>15</sup> (as well as in SFU's centralized Policy Gazette<sup>16</sup>). The Copyright Office is available by email or phone to any member of the university community when questions or concerns arise; the office addressed 258 such questions in 2017-18.<sup>17</sup>

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<sup>14</sup> SFU Copyright Office stats, internal.

<sup>15</sup> See Copyright law and policy, available at <https://www.lib.sfu.ca/help/academic-integrity/copyright/law-policy>.

<sup>16</sup> See Research Policies, available at <http://www.sfu.ca/policies/gazette/research.html>.

<sup>17</sup> SFU Copyright Office stats, internal.

The SFU Copyright Office regularly surveys instructors about their copyright knowledge and their use of fair dealing and other provisions for providing content to students.<sup>18</sup> Copyright protected content uploaded to SFU's learning management system by instructors is routinely audited in conjunction with these surveys, and the results of these surveys and audits are used to enhance the education and informational materials provided by the Copyright Office. SFU does not tolerate copyright infringement and has an enforcement/disciplinary process in place when needed.

## Summary

As detailed above, instructors and other members of the SFU community:

- Primarily use scholarly works.
- Are the creators of scholarly works.
- Continue to require the purchase of creative works such as novels, short stories, poems and plays by students.
- Use works licensed through subscriptions by the Library, under the terms of those licenses.
- Use open access works and those made freely available online.
- Apply fair dealing responsibly and with guidance when suitable, and obtain licenses when necessary.
- Turn to the SFU Copyright Office for information and education.

## Recommendations

Simon Fraser University makes the following recommendations for the Committee's consideration:

1. Do not make changes to fair dealing at this time.
2. Clarify that a contract cannot override a user's rights under fair dealing.
3. Clarify that tariffs for the use of literary works are not compulsory; and do not group collective societies governed by s 70.1 with those governed by s 67.

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<sup>18</sup> See The Copyright Provision Recordkeeping Survey, available at <https://www.lib.sfu.ca/help/academic-integrity/copyright/recordkeeping-survey>.

Submitted for Simon Fraser University by Donald Taylor and Jennifer Zerkee,  
SFU Copyright Office. For more information, contact:

Donald Taylor  
Copyright Officer  
SFU Copyright Office  
W.A.C. Bennett Library  
Simon Fraser University  
8888 University Drive  
Burnaby, BC V5A 1S6  
[sfu.ca](http://sfu.ca)