

Attachment D

Dispelling the myth that fair dealing for education has led to the ‘decimation’ of the Canadian educational publishing sector

As is clear from the table below, this assertion, which has been made by several publishers in submissions to the Productivity Commission, is demonstrably false.

Submitter	Claims made	Facts
Oxford University Press	<p><i>“In 2014, Oxford University Press ceased publishing in its schools divisions for a number of reasons, including declining provincial budgets and weaker post-recession economy, but most significantly because of the loss of licensing income distributed on behalf of Access Copyright. “</i></p>	<p>From the OUP 2013/2014 Annual Report:</p> <p><i>“We also encountered difficulty in Canada, where we took the hard decision during the year to wind down our development of local educational content for the schools market. This followed a decade-long decline in the Canadian market for educational resources during which purchases of materials have fallen by nearly 50 per cent. This decision does not affect our other activities in Canada, however, including our market-leading Higher Education and ELT programmes. “</i></p> <p>And from the OUP 2012/2013 Annual Report:</p> <p><i>“Growth also took place in neighbouring Canada, where OUP is one of the largest publishers in the humanities and social sciences. A string of new titles helped to buoy sales, while digital revenue increased tenfold on the previous year. .. Canada secured significant sales increases in a declining market, buoyed by a major high school</i></p>

		<p><i>geography adoption.</i> “</p> <p>In other words, the schools market has been declining for 10 years <u>prior</u> to OPU’s decision to exit Canada (ie long before the 2012 changes to Canadian copyright law that OUP complains about), and the higher education market is thriving despite the fact that universities can claim the benefit of the new fair dealing for education exception.</p>
Oxford University Press	<p><i>“The impact that the changes had on Oxford University Press is just one example of the significant harm that has been caused to educational publishing in Canada. Emond, a locally owned publisher, has also ceased publishing...”</i></p>	<p>From the Emond Publishing Website¹</p> <p><i>“Today, Emond Publishing has expanded to serve the college, university, and professional market with resources that students and professionals can rely on from backpack to briefcase. In 2015, Emond published the first book in the Emond Professional Series, a new collection of practical handbooks for professionals embarking upon careers as lawyers, paralegals, and law clerks.”</i></p>
Oxford University Press	<p><i>“Nelson, the largest educational publisher, tried to sell its business, and when this failed, declared a form of bankruptcy.”</i></p>	<p>The suggestion was that it was fair dealing for education that led the demise of this publishing company.</p> <p>The facts, however, are set out in an affidavit from the company’s CEO²: it is clear that the company’s failure was largely a result of:</p> <ul style="list-style-type: none"> ● declines in educational funding ● slower course curriculum refresh ● greater uptake of open access educational resources, and ● the transition to digital.

¹ <http://www.emond.ca/about-emond.html>

² [http://cfcanada.fticonsulting.com/NelsonEducationLtd/docs/Application%20Record%20\(%20Returnable%20May%2012%202015%20\)%20part%201%20of%203.pdf](http://cfcanada.fticonsulting.com/NelsonEducationLtd/docs/Application%20Record%20(%20Returnable%20May%2012%202015%20)%20part%201%20of%203.pdf)

<p>McGraw Hill Education</p>	<p><i>“Taking the Canadian experience from 2012, revisions to fair dealing directly contributed to an unprecedented decline in Access Copyright revenue for McGraw Hill Education in Canada... There has been a subsequent loss of jobs and a shift to a US structure, damaging not only the local industry but by extension the publication of Canada-specific cultural and curricula content.”</i></p>	<p>From the McGraw Hill Ryerson 2012/2013 Annual Report: ³</p> <p><i>“The Higher Education Division reported consistent sales with a slight increase of 0.4% in a market that was lower year-over-year. This Division continues to invest in the development of digital and customized learning solutions, areas that have grown over the past two years and that we believe are the key to our long-term growth and profitability in Higher Education. The School Division reported a sales decrease of 23.1% while industry-wide results declined 12.0%. This under performance relative to the industry is a result of non-recurring sole source contracts. Spending in all regions decreased this year as curricular implementation reached cyclical lows. We continue to develop products to serve areas that show promise for growth, including continued improvements to our digital products.”</i></p> <p>In other words, the higher education market is thriving <i>despite</i> universities now being able to take advantage of fair dealing for education, and the schools market declined for reasons quite unrelated to copyright.</p>
<p>Macmillan Education</p>	<p><i>“We support the view of the Oxford University Press Australia and NZ Submission that highlights the severe impact seen on businesses in Canada due to the change to a ‘fair use’ approach to copyright. We believe the same result would occur in Australia if</i></p>	<p>The suggestion appears to be that “fair use” and a thriving educational publishing market are not compatible, but the evidence is very much to the contrary. In the US - which has had fair use for much longer than Canada has had a fair dealing for education</p>

³ http://arielkatz.org/wp-content/uploads/2014/06/2013_annual_report.pdf

	<p><i>‘fair use’ was to go ahead. ‘Fair use’ does not provide protection for a sustainable local publishing industry.”</i></p>	<p>exception - the educational publishing market is actually thriving. See, for example, a recent media report on “Why Educational Publishing is Big Business”:⁴</p> <p><i>“Education publishers are much bigger than other media companies that attract much more attention. Pearson is far bigger than AOL or The New York Times Company (and much more profitable). In order to find publishers with greater profits, you have to go up the ladder to companies like News Corp that include global television markets, or retail entities, like Amazon. This makes companies like Pearson hard to ignore...”</i></p> <p style="text-align: center;"><i>and</i></p> <p><i>“...We talk a lot about the transformation to an information economy, but companies like Pearson, Elsevier, Thomson Reuters and McGraw-Hill epitomise it. Textbooks and institutional publishing services lie at the exact juncture of knowledge and money”.</i></p> <p>Contrary to what Macmillan Education suggests, fair use clearly does provide protection for a sustainable publishing industry.</p>
<p>Australian Publishers Association</p>	<p><i>“The impact of the changes on educational publishers is irrefutable and negative. A recent report from PWC is pretty clear and damning.”</i></p>	<p>The PWC report states that schools are making greater use of publicly funded open sourced educational materials. PWC says that this is a threat to Canadian publishers as it provides textbooks and course materials for free.</p>

⁴ <http://www.wired.com/2012/01/why-education-publishing-is-big-business/>