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**Submission in response to Intellectual Property Arrangements  
Productivity Commission Issues Paper, October 2015**

Oxford University Press is pleased to have this opportunity to respond to the Productivity Commission's Issues Paper on Intellectual Property Arrangements. This response concerns only the following question that the Issues Paper has raised:

***What role can fair dealing and/or fair use provisions play in striking a better balance between creators and consumers?***

'Debate on changes to copyright focuses on the benefits and costs imposed on Australians, both on consumers and producers of creative works. Empirical assessment of the costs and benefits is difficult, both in assessing the impacts of these agreements Australia has already joined, and for assessing the prospective impacts of any new agreement.'<sup>i</sup>

This submission focuses on the potential impacts of any new agreement that changes the definition and terms of 'fair dealing' or 'fair use' provisions for the protection of copyright in works by providing a summary of the impact on Oxford University Press in Canada.

**Case study: Oxford University Press Canada**

Canada's new 'fair dealing' guidelines, which were adopted in 2012, and which redefined what can be copied without compensation to creators and publishers, has had significant negative impacts on educational publishing in Canada. The new guidelines promote the systematic copying of 10% of a chapter or a work, entire newspaper, journal or magazine articles, short stories and more. As a result of the change to the guidelines, schools in Canada no longer pay royalties (licence fees) for copying published works.<sup>ii</sup>

In 2014, Oxford University Press ceased publishing in its schools division for a number of reasons, including declining provincial budgets and a weaker post-recession economy, but most significantly because of the loss of licencing income distributed on behalf of schools by Access Copyright (equivalent to Australia's Copyright Agency).<sup>iii</sup> David Stover, the then President of Oxford University Press Canada, asserted that the royalties, which were around \$10 million for the K-12 education market, were a 'significant factor in making school publishing viable...'. 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 small publisher, also ceased publishing,' says Geoff Forgoon, General Manager & VP Finance. 'Nelson, the largest educational publisher, tried to sell its business, and when this failed declared a form of bankruptcy. McGraw Hill has moved distribution to the US and has severely scaled back its local publishing activity. Pearson has also scaled back local publishing. Wiley is now entirely based in the US, having shut down all significant operations in Canada. There have been so many layoffs I have lost count.'

#### **Significant financial harm to Australian educational publishing**

If similar revisions are made to the definition and terms of 'fair dealing' or 'fair use' provisions in Australia, Oxford University Press in this country will be exposed to huge financial risk, and its authors and creators will be significantly impacted. Licence fees charged to educational institutions for copying copyrighted works are in lieu of royalties not received through the sale of the same works. Licence fees are a significant contributor to the overall sustainability of Oxford University Press in Australia; its authors and creators rely on their share of licence fees to supplement reduced royalty payments because consumers choose to photocopy the content instead. Licence fees serve to support the authorship of Australian content.

#### **Significant impact on the livelihoods of specialist Australian educational publishing professionals**

If revisions are made to the definition and terms of 'fair dealing' or 'fair use' provisions, the financial livelihoods of Oxford University Press staff will be put at risk along with the viability of the entire educational publishing industry that is relied on by schools to deliver concrete materials to support government curricula. Oxford University Press Australia works with thousands of creative Australian citizens, including:

- 167 full-time and part-time Australian employees
- Hundreds of freelance and contracted Australian creators and agencies, including educators, academics, designers, illustrators, photographers, typesetters and printers
- Thousands of Australian authors
- Graduates from Australian university publishing courses, a significant proportion who are employed by the educational publishing industry.

#### **Significant reduction of new, creative and innovative content developed by Australian educational publishers, authors and creators for Australian teachers and students**

If revisions are made to the definition and terms of 'fair dealing' or 'fair use' provisions, our schools will have a significantly reduced choice in print and digital content developed for our curricula. There will be fewer publishers, a decrease in variety and availability of content, and decreased

investment in developing new and innovative content. Put most simply, the financial incentives for creators and publishers to develop and publish new, innovative Australian content will be hugely diminished. And, very significantly, our schools and their teachers, students and the learning afforded will suffer due to the lack of innovative Australian education content available.

**The onus and financial burden to supplement the shortfall in developing new and innovative Australian content will be transferred to Federal and State governments**

If similar revisions are made to the definition and terms of 'fair dealing' or 'fair use' provisions in Australia, there will be fewer publishers and fewer authors and creators willing to invest in and develop new and innovative Australian content, and so responsibility for providing national and state curriculum content will fall on the Federal and state Governments, resulting in a new and significant financial cost to the country.

**Concluding remarks**

If copyright exceptions need to be modified, the modifications *must* be better and fairer for all Australian citizens, including its publishers, authors and creators. The modifications *must* ensure the financial sustainability of the Australian educational publishing industry and its employees, and Australian authors and creators. Any modifications *must* also ensure that the Australian educational publishing industry can continue to invest in developing new and innovative print and digital content for Australian teachers and students.

High-quality resources contribute to the delivery of high-quality education and therefore the growth and prosperity of Australia's education. The Australian-originated innovative content that is developed by Australian educational publishers is an inseparable part of the teaching and learning that takes place in Australian schools. Any revisions to 'fair use' or 'fair dealing' provisions must be balanced with a sustainable and profitable Australian educational publishing industry. For the sake of us all, and for the sake of our capacity to continue to develop Australian-originated innovative content for Australian schools, we cannot repeat the mistakes made in Canada. In September 2015, a report was published about Canadian copyright law continuing to hammer publishers; they have had '...devastating effects on educational publishers and will ultimately contribute to a decline in the quality and quantity of content available to students'.<sup>iv</sup>

We hope that the Productivity Commission finds this submission useful. Please do not hesitate to contact us if we can be of further assistance.

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<sup>i</sup> Australian Government Productivity Commission, *Intellectual Property Arrangements, Productivity Commission Issues Paper*, pp. 18-19, October.

<sup>ii</sup> International Publishers Association, 2015, *Impacts of the Canadian Education Sector's Interpretation of 'Fair Dealing'*, 3 September, [http://www.internationalpublishers.org/educational-publishing/policy-reports/case-studies-and-others/326-impacts-of-the-canadian-education-sector-s-interpretation-of-fair-dealing?utm\\_source=IPA+Newsletters&utm\\_campaign=bfb0103a56-August+2015+newsletter&utm\\_medium=email&utm\\_term=0\\_fc11f8b022-bfb0103a56-93931441](http://www.internationalpublishers.org/educational-publishing/policy-reports/case-studies-and-others/326-impacts-of-the-canadian-education-sector-s-interpretation-of-fair-dealing?utm_source=IPA+Newsletters&utm_campaign=bfb0103a56-August+2015+newsletter&utm_medium=email&utm_term=0_fc11f8b022-bfb0103a56-93931441)

<sup>iii</sup> Baldassi, Julie, 2014, *Why the loss of Access Copyright royalties could be devastating for education publishers*, Quill and Quire, 29 May, <http://www.quillandquire.com/book-news/2014/05/29/why-the-loss-of-access-copyright-royalties-could-be-devastating-for-educational-publishers/>

<sup>iv</sup> Williams, Leigh Anne, with reporting from Godfrey, Laura, 2015, *Canadian Publishing 2015: Changes to Canadian Copyright Law Continue to Hammer Publishers*, Publishers Weekly, 18 September

Additional reference:

Access Copyright, 2014, *Impacts of the Education Sector's Interpretation of 'Fair Dealing'*, 20 July, <http://www.accesscopyright.ca/media/bulletins/impacts-of-the-education-sector%E2%80%99s-interpretation-of-fair-dealing/>