

# Searching for meaning in the *Copyright Act Review*

A qualitative analysis of stakeholder briefs



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# Who we are

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*All findings in this presentation should be understood as preliminary.*

# Background

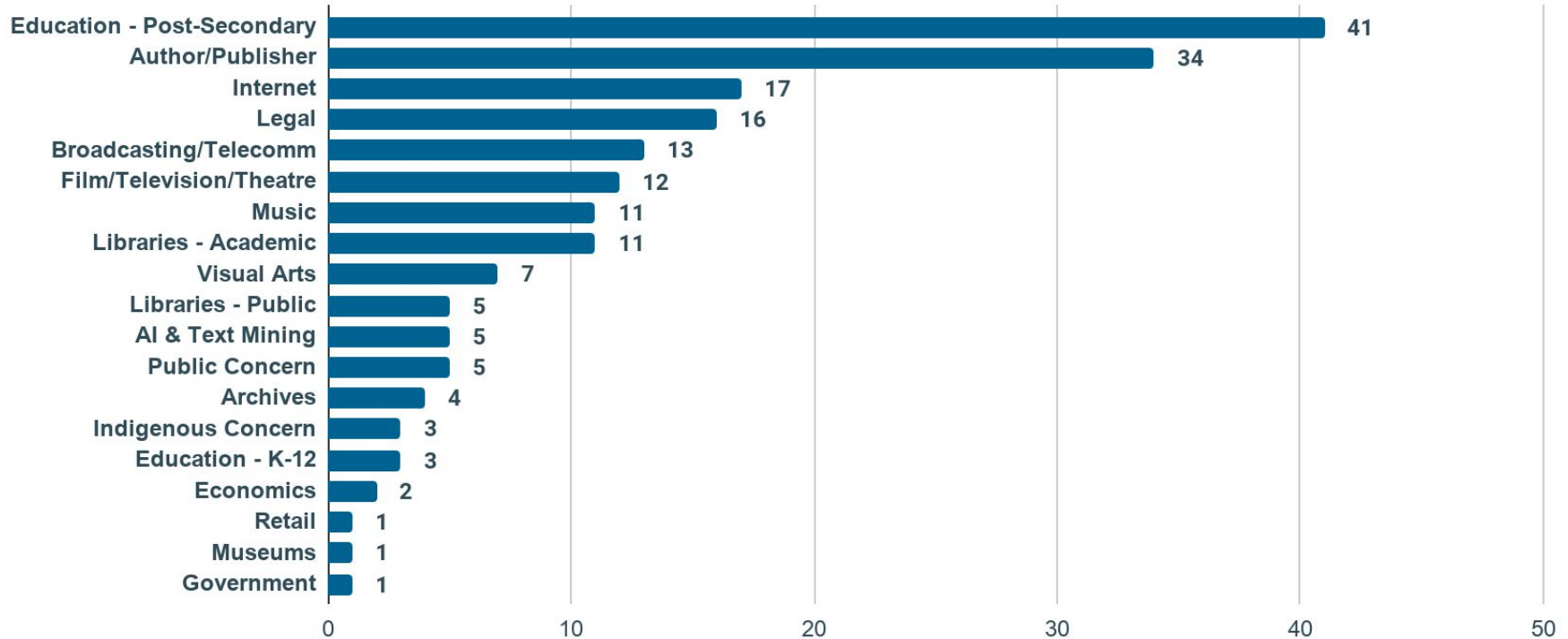
- 2017** Standing Committee on Industry, Science and Technology (INDU) announced *Copyright Act* review.
- 2018** INDU held 52 meetings, heard from 263 witnesses, and received 192 briefs.
- 2019** INDU released its report and recommendations.  
Standing Committee on Canadian Heritage also released recommendations.  
Federal election.
- 2020** COVID-19 interrupts... everything.
- 2022** Next *Copyright Act* review expected to be launched.

# Our research question

**Q: What is the picture the briefs paint as a whole, and what impact might that have on the committee and the outcomes of the review?**

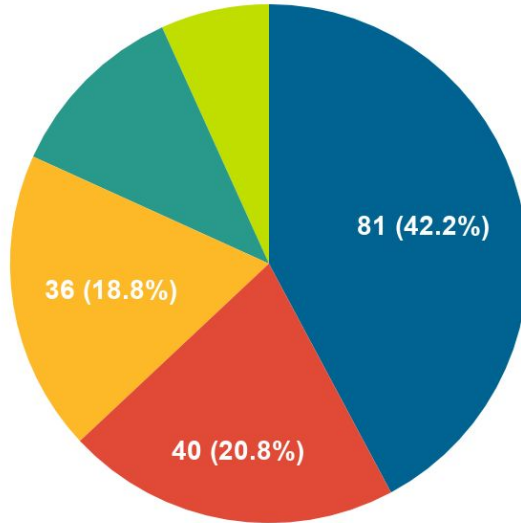
- Who submitted briefs?
- Do specific communities present cohesive messages within their submissions?
- Do the briefs correlate to any action/reports coming out of the review?

# Who submitted briefs?



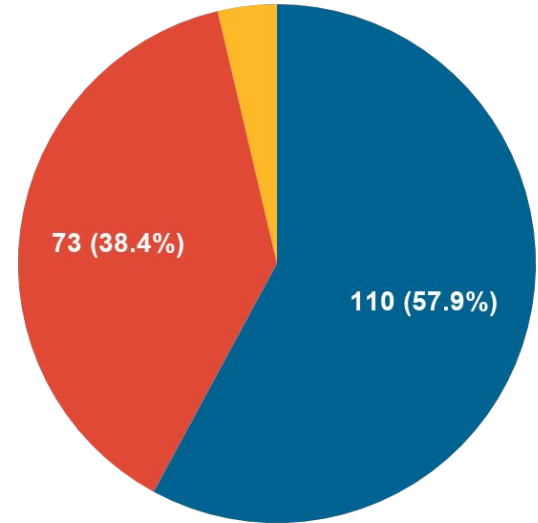
# Who submitted briefs?

Region



● National ● None (individuals) ● Regional/Provincial ● International ● Quebec

Perspective



● User ● Creator ● Unsure

# NVivo: codes, nodes, sources and references

## Nodes

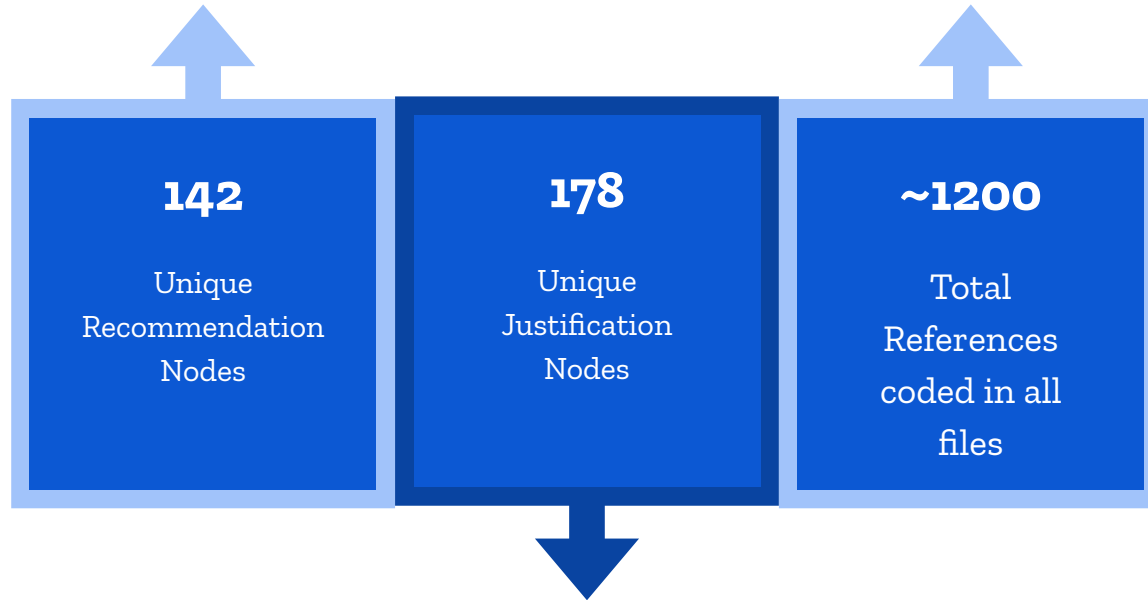
| Name                       | Files | Refer |
|----------------------------|-------|-------|
| Fair dealing - maintain    | 55    | 55    |
| TPMs - permit circumv      | 41    | 41    |
| Contract overrides - pr    | 32    | 32    |
| Indigenous rights - rec    | 30    | 30    |
| Fair dealing - limit       | 25    | 26    |
| Crown copyright - limit    | 25    | 25    |
| Term - maintain life + 5   | 22    | 22    |
| Text and data mining e     | 21    | 22    |
| Fair dealing - expand      | 20    | 20    |
| Statutory damages - ex     | 19    | 20    |
| Mandatory tariffs - reje   | 17    | 17    |
| No recommendations         | 15    | 15    |
| Copyright board - refor    | 14    | 14    |
| Statutory damages - m      | 13    | 13    |
| Term - extend to life +    | 13    | 13    |
| Private copying regime     | 13    | 13    |
| Website blocking - intr    | 10    | 10    |
| Notice and notice - im     | 9     | 10    |
| Artist resale right - intr | 0     | 0     |

## Extending term of copyright does not create additional incentives for creation of works

Most copyrighted works are commercially viable for a short period of time.<sup>8</sup> In the vast majority of cases, adding an additional twenty years of copyright protection will not produce significant benefits for the rights-holders or their heirs, who have already received the financial benefits for the work. Further, published research from Industry Canada concluded that extending the term of copyright does not create additional incentives for new creativity<sup>9</sup> and may carry considerable economic costs.<sup>10</sup>

The Government of Canada resisted the imposition of a longer term in CETA and the Trans-Pacific Partnership negotiations, and CARL recommends that the government retain its firm stance on the length of protection.

# NVivo coding by the numbers (stakeholder briefs)





# Strong vs weak recommendations

## Strong Recommendation 106/142

[<Files\BSATheSoftwareAlliance-e>](#) - § 1 reference coded [0.62% Coverage]

Reference 1 - 0.62% Coverage

we urge the Committee to recommend the adoption of an express exception to ensure that copying a lawfully accessed work for the purpose of "information analysis" is not infringing.

## Weak Recommendation - 36/142

[<Files\MorrisonHeather-e>](#) - § 1 reference coded [0.69% Coverage]

Reference 1 - 0.69% Coverage

I recommend the abolition of Access Copyright and redirection of funding by universities and school boards to directly support open access in academia and the K-12 sector (e.g. funding for open access monographs, journals, and textbooks).

# No recommendations

|                                       |  |
|---------------------------------------|--|
| Australian Copyright Council          | International Alliance of Theatrical Stage Employees |
| Bernice Friesen                       | Marcel Boyer   |
| Barry Sookman                         | Nami Cho   |
| Copyright Licensing New Zealand       | Public Lending Right International                   |
| Djanka Gajdel                         | Ryan Kelln   |
| Federation of Canadian Municipalities | Robert Tiessen                                       |
| Guy Vanderhaeghe                      | Screen Composers Guild of Canada                     |
| International Authors Forum           |  |

# What were stakeholders' priorities?

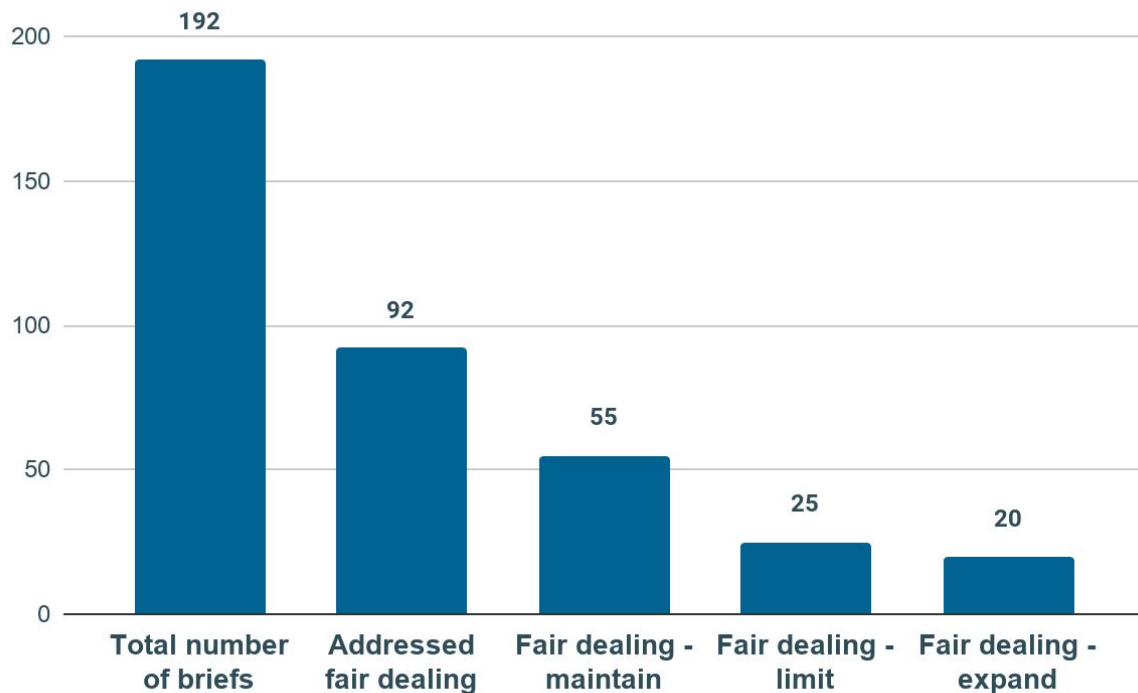
## Top broad topics:

1. Fair dealing (47.9% of briefs)
2. Term of copyright protection (21.9%)
3. Technological Protection Measures (TPMs) (21.4%)
4. Statutory damages (18.8%)
5. Contract overrides (16.7%)
6. Indigenous rights (15.6%)

## Top specific recommendations:

1. Fair dealing - maintain (28.6% of briefs)
2. TPMs - permit circumvention for legal purposes (21.4%)
3. Contract overrides - prohibit (16.7%)
4. Indigenous rights - recognize (15.6%)
5. Fair dealing - limit (13.0%)

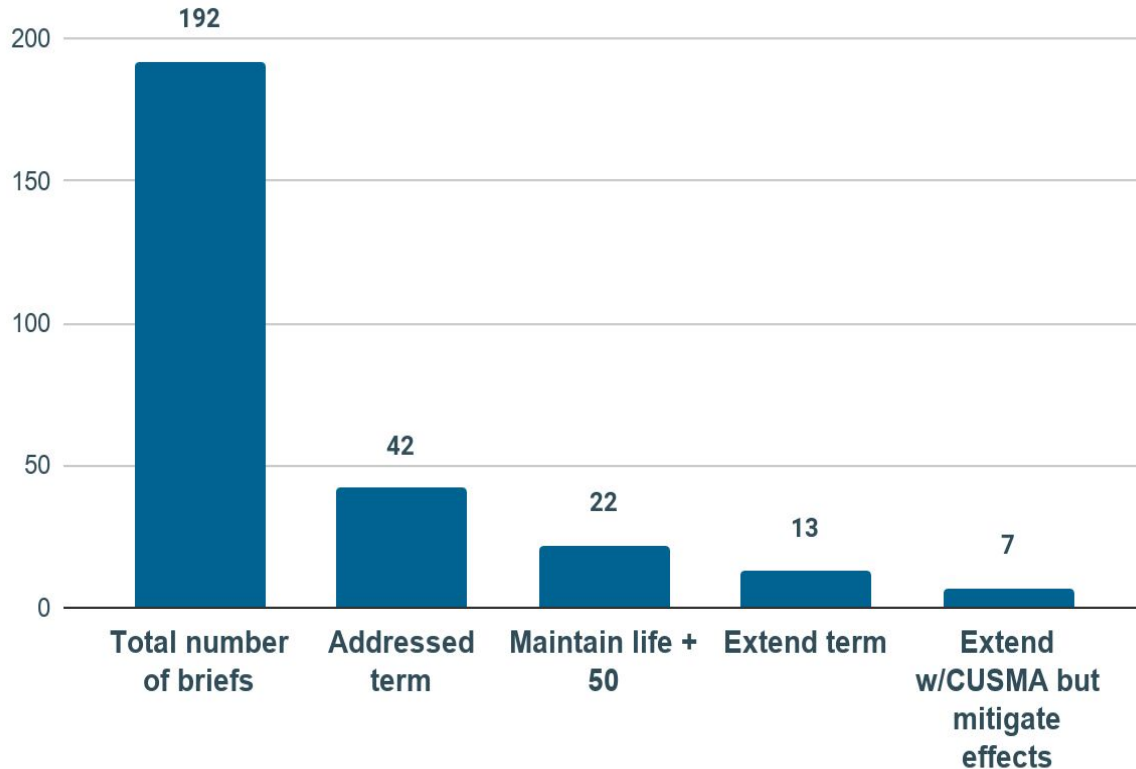
# Stakeholder priorities: fair dealing



## Recommendation 18

That the Government of Canada introduce legislation amending section 29 of the *Copyright Act* to make the list of purposes allowable under the fair dealing exception an illustrative list rather than an exhaustive one.

# Stakeholder priorities: term of copyright protection



## Recommendation 6

That, in the event the term of copyright is extended, the Government of Canada consider amending the Copyright Act to ensure that copyright in a work cannot be enforced beyond the current term unless the alleged infringement occurred after the registration of the work.

# Stakeholder priorities: Indigenous rights

Stakeholders recommended:

*That the Copyright Act respect, affirm and recognize Indigenous people's ownership of their traditional and living respective Indigenous knowledge. (CFLA)*

*Ensure the protection and respectful use of Indigenous traditional knowledge; consult Indigenous communities and national Indigenous organizations to work towards this protection. (CICan)*

## **Recommendation 5**

That the GoC consult with Indigenous groups, experts, and other stakeholders on the protection of traditional arts and cultural expressions in the context of Reconciliation, and that this consultation address the following matters, among others....

# The INDU Report, by the numbers

## LIST OF RECOMMENDATIONS

*As a result of their deliberations committees may make recommendations which they include in their reports for the consideration of the House of Commons or the Government. Recommendations related to this study are listed below.*

### Recommendation 1

**That the Government of Canada introduce legislation to repeal section 92 of the *Copyright Act* in order to remove the requirement to conduct a five-year review of this Act. .... 24**

### Recommendation 2

**That the Government of Canada simplify the wording and the structure of the *Copyright Act*. .... 25**

### Recommendation 3

**That the Government of Canada establish a Research Chair on Remuneration and Business Models for Creators and Creative Industries in the Digital**

INDU outlines 36 recommendations

We coded 41 recommendations

22 “Strong” recommendations

19 “Weak” recommendations

# The INDU Report

## Strong Recommendation

### Recommendation 1

**That the Government of Canada introduce legislation to repeal section 92 of the *Copyright Act* in order to remove the requirement to conduct a five-year review of this Act. .... 24**

## Weak Recommendation

### Recommendation 16

**That the Government of Canada consider establishing facilitation between the educational sector and the copyright collectives to build consensus towards the future of educational fair dealing in Canada. .... 65**



# The INDU Report

Of the 41 recommendations, only 20 correspond to recommendations made by stakeholders.

Of the 22 strong recommendations, 16 correspond to those of stakeholders, leaving 6 unique strong INDU recommendations:

Collective licensing - let users negotiate as a group

Community systems - define

Government use - clarify that does not infringe

Government use - provide for compensation

Online infringement - consider net neutrality

Radio and broadcaster tariff exemption - limit

# Citations in the INDU report

that of major trading partners, and so ensure that Canadian rights-holders compete internationally on a levelled playing field. Finally, term extension would benefit a deceased author's descendants—providing they hold copyright.<sup>57</sup>

Several witnesses opposed extending the term of copyright.<sup>58</sup> They predicted it will worsen the problem of orphan works,<sup>59</sup> and make it harder to access, build on, disseminate, and preserve works for commercial and non-commercial purposes.<sup>60</sup> For

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Barker, [Brief Submitted to INDU](#), 14 December 2018; Canadian Independent Music Association [CIMA], [Brief Submitted to INDU](#), 14 December 2018; ole Media Management [OMM], [Brief Submitted to INDU](#), 14 December 2018.

57 INDU, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 9 May 2018, 1405 (Marian Hebb & William Harnum, Canadian Copyright Institute [CCI]); INDU, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 9 May 2018, 1620 (Ken Thompson & Marian Hebb, Artists and Lawyers for the Advancement of Creativity [ALAC]); INDU, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 June 2018, 1600 (Éric Lefebvre, Guilde des musiciens et musiciennes de Québec [GMMQ]); INDU (2018), [Evidence](#), 1635 (McGuffin, CMuPA); INDU (2018), [Evidence](#), 1550 (Henderson, Music Canada); INDU (2018), [Evidence](#), 1630 (Baptiste & Daigle, SOCAN); INDU, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 19 June 2018, 1620 (Wendy Noss, Motion Picture Association-Canada [MPAC]); INDU, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 19 June 2018, 1630 (Alain Lauzon & Martin Lavallée, Society for Reproduction Rights of Authors, Composers and Publishers in Canada [SODRAC]); INDU, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 19 September 2018, 1555, 1620 (Mathieu Plante & Stéphanie Hénault, SARTEC); INDU, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 15 October 2018, 1555 (Elisabeth Schlittler & Patrick Lowe, SACD); INDU, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 26 November 2018, 1605 (Jeff Price, as an individual); SOCAN, [Brief Submitted to INDU](#), 13 June 2018; Canadian Association of Professional Image Creators & Professional Photographers of Canada [CAPIC & PPC], [Brief Submitted to INDU](#), 4 July 2018; CCI, [Brief Submitted to INDU](#), 21 September 2018; ALAC, [Brief Submitted to INDU](#), 14 December 2018; Canadian Authors Association [CAA], [Brief Submitted to INDU](#), 14 December 2018; OMM, [Brief Submitted to INDU](#), 14 December 2018.


58 INDU (2018), [Evidence](#), 1650 (Foster & Jones, CAUT); INDU (2018), [Evidence](#), 1400 (Stewart & Bourne-Tyson, CAUL); INDU (2018), [Evidence](#), 1600 (Westwood, DFA); INDU, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2019, 1605 (Jean-Philippe Béland, Wikimedia Canada); University of Lethbridge, [Brief Submitted to INDU](#), 28 September 2018.

59 Consumer Technology Association [CTA], [Brief Submitted to INDU](#), 11 September 2018; University of New Brunswick [UNB], [Brief Submitted to INDU](#), 4 December 2018.

60 INDU (2018), [Evidence](#), 1910 (Macklem); INDU, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 1410 (Christine Middlemass & Donald Taylor, British Columbia Library Association [BCLA]); INDU, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 October 2018, 1640, 1720 (Michael Petricone, CTA); INDU, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 October 2018, 1640 (Kelsey Merkle, Creative Commons Canada [CrCC]); INDU (2018), [Evidence](#), 1600 (de Beer); INDU, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 11 May 2018, 1910 (Christina de Castell, as an individual); Creative Commons, [Brief Submitted to INDU](#), 25 May 2018; DFA, [Brief Submitted to INDU](#), 13 June 2018; MRU, [Brief Submitted to INDU](#), 18 June 2018; International Federation of Library Associations and Institutions [IFLA], [Brief Submitted to INDU](#), 12 October 2018; University of Alberta, [Brief Submitted to INDU](#), 20 November 2018; CPSLDBC, [Brief Submitted to INDU](#), 4 December 2018; Mark Akridge, [Brief Submitted to INDU](#), 14 December 2018; Carley Angelstad, Sara Barnard, Joel Blechinder, Allison Easton, Erin Hoar, Christine Hutchinson, Christian Isbiter, Jack Lawrence, Jennifer McDevitt, Deniz Ozgan, Holly Pickering, Emily Villanueva & Katherine Wells, [Brief Submitted to INDU](#), 14 December 2018; Athabasca

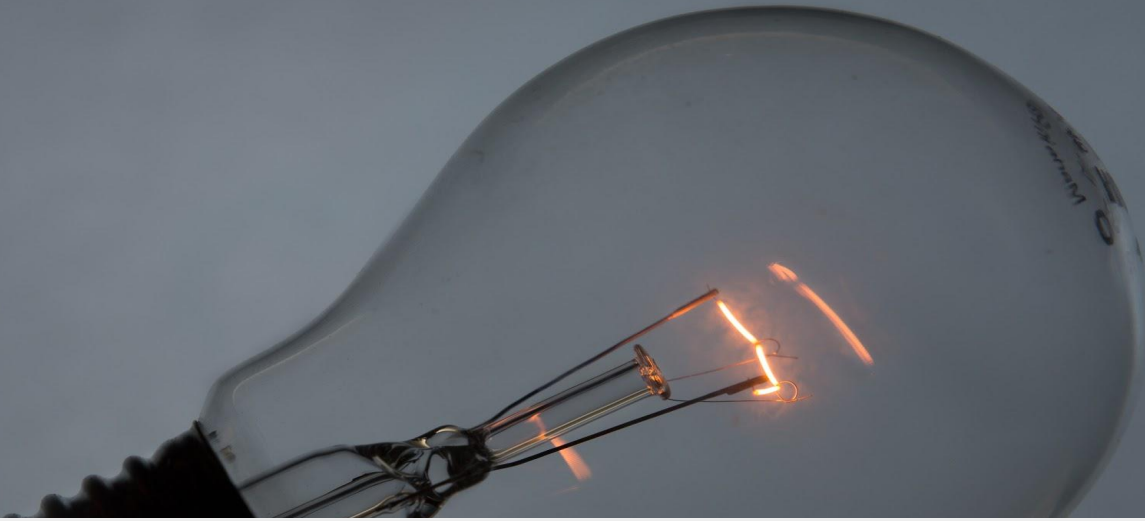
1. Michael Geist: 25 references
2. Tie: Council of Atlantic University Libraries; Howard Knopf; Music Canada: 20 references
3. Casey Chisick: 19 references
4. Tie: Artists and Lawyers for the Advancement of Creativity; Canadian Association of Research Libraries: 18 references
5. Tie: Association of Canadian Publishers; Union des écrivaines et des écrivains québécois: 17 references

# Next steps

- Working with an RA, thanks to a CARL Research in Librarianship grant 
- Further analysis of the briefs, INDU report, and citations to stakeholders
- Using a justificatory framework to analyze stakeholders' justifications<sup>1</sup>
- Looking at INDU meeting transcripts, making connections and comparisons to the briefs and the INDU report

<sup>1</sup> Edwards, L., & Moss, G. (2020). Evaluating justifications of copyright: An exercise in public engagement. *Information, Communication & Society* 23(7): 927-946. <https://doi.org/10.1080/1369118X.2018.1534984>





## Questions?

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