

## Why the Transactional Model for Secondary Uses is Unsuitable to the New, Digital Economy

### Comprehensive licences protect users as well as rights holders

Payment for use is the principle at the heart of copyright. Licensing is simply a business mechanism that allows this to happen.

Collective licensing protects everyone's interests. It ensures that rights holders are compensated for secondary uses of copyright-protected works, and that users are protected from the risk of involuntary infringement.

The rapid evolution of technology demands that business tools evolve to keep up. With the sobering example of the music industry in mind, business models for content must meet the challenges of the digital economy.

The evolution from transactional models to comprehensive "blanket" licences is an example of how technological change is driving our industry to adapt, not just in Canada, but in every corner of the developed world.

Transactional licences - licences issued on a pay-per-use basis - were more effective as a business model for secondary uses of published works when paper ruled the world of publishing and copying. Transactional licences were a practical alternative when copying was centralized and compliance was easily monitored. This is no longer the case.

Today's digital technologies have placed powerful tools for secondary uses of copyright-protected works in the hands of anyone with a laptop and access to the Internet. In the past, a large proportion of copying was made up of centrally produced paper coursepacks. Now, digital technology allows for the decentralized copying and delivery of a rapidly growing proportion of secondary uses. In a university or college setting, these uses can occur in a professor's office, the student's dorm, or any coffee house with a WiFi hotspot.

When obtaining a licence is difficult or impractical, there is actually an in-built incentive to skip that step. Involuntary infringement is encouraged by the ease with which digital copying can be done, and the difficulty of monitoring compliance. The urge to "just do it" will win out every time.

Comprehensive or “blanket” licences ensure protection from liability by ensuring that usage is legal. They are effective, fast, safe, and reliable. It’s the only way to capture the greatest number of uses that would otherwise be infringing. Comprehensive licences make sense in today’s digital economy.

The application of any mechanism designed to encourage and facilitate respect for copyright has to make sense, or nobody will use it. The enormous investment the Canada Revenue Agency has made to facilitate tax filing is all about ensuring compliance by making it easy. The assumption is always that most people will do the right thing if you don’t put impediments in their way. The same holds true with licensing.

Transactional licences for secondary uses of works are often not suited to the demands of the new digital economy. Impractical to implement and costly to administer, they have the added weakness of being unable to capture uses that should be compensated. They do not ensure that all secondary uses are legal, on the contrary, their very impracticality is an incentive to infringe.

A comprehensive licence, on the other hand, is a fast, easy and cost-efficient way to clear copyright protected works. It ensures that uses of works are cleared and tracked in a consistent and structured way. As always, publishers also have the option to clear the rights themselves directly with educational institutions, in accordance with their individual business interests.