

Amazon hurt them. The lockdown hurt them. Now there's a painful loss in court. Canada's book biz — authors, publishers, retailers — is hunting for a new business model

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If there were ever a perfect storm for the publishing industry in Canada, this is it. Bricks-and-mortar stores have shut down, leaving booksellers, large and small, scrambling to do business online; they're beginning to send unsold books back to publishers, putting pressure on their bottom line; and a legal decision has come down that affects publishers and writers struggling to get paid for the works that educators are so desperate to use right now.

“The characteristics of the market and our ecosystem that were challenging before COVID-19 have become even more intense,” says Kate Edwards, executive director of the Association of Canadian Publishers.

Heather Reisman, CEO of Indigo Books & Music, is blunt about the pandemic's impact on retailers. “We need government help,” she says, adding that internet commerce won't fix things.

“We've been very happy with online book sales even though it's not profitable at all,” said Reisman. “We make no money online. We're still happy to support our customers ... our job is to figure out how to get some support so that it is no longer a money-losing channel.”

Reisman is also very clear about what she thinks has made online sales a money-losing endeavour in Canada.

“From the day Amazon started, they made the decision to sell books well below the suggested retail price,” she says. “Not just bestsellers ... they have set prices for all books that are anywhere from 20 to 50 per cent below the retail price that is suggested.”

At discounts like that, it's hard for retailers who still have hard costs for physical shops to keep up. And now that those stores have been shuttered for more than two months, needing to rely only on online sales, the problems have been brought under a microscope.

“By the time you handle the books, provide the discount, give the great service, in many cases do the free shipping, if you do all of that you cannot make money. The problem is ... that by allowing them to run (roughshod on) pricing they have created huge pressures on booksellers and that, by extension, will end up putting pressure on publishers and writers.”

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That knock-on effect as already started to manifest itself throughout the industry.

Hunter Street Books in Peterborough, for example, has just announced it's closing its stand-alone store, but will keep a brick-and-mortar presence in the Meta4 gallery next door, as well as an online bookshop.

According to Hamish Cameron, vice-president of distribution at the University of Toronto press, which acts as a distributor for many independent presses, online sales aren't particularly profitable for Amazon, either. But, he says, "they're prepared to sell at a lower margin, I guess."

The system is also set up so that Amazon can order books in "onesies and twosies," Cameron says. Indigo, on the other hand, with 210 stores across the country, will put in an order of "300 or 3,000" depending on the book. But they'll also return more books that haven't sold. More on this in a moment.

As a distributor, this has an impact on how he works. "Obviously, you would rather fill a thousand-book order than a two-book order 500 times, but realistically with everything shut down, Amazon is sustaining publishers in some minor way."

"Now we're entering a new phase of business where there's the opening up of retail," says Edwards, "but the slowdown is going to catch up with us." That, too, is starting to manifest itself not just with booksellers, but with small publishers.

Recently on Facebook, Noelle Allen, publisher of the small indie press Wolsak and Wynn, lamented that she was about to start seeing books returned from Indigo. "I will have received over \$10,000 market value worth of books from Indigo in the next few weeks," she tells the Star in an interview. "That is easily two months of my sales (in a normal year) just wiped out."

These returns will be credited toward any bills that Indigo has outstanding with the company, and put as a credit toward any new books they order. What it means for her, Allen says, is that the money she would have spent promoting her new crop of books is gone.

This book-returns policy was first put into practice during the Great Depression when publishers were trying to convince booksellers to buy more books and also encourage them to take chances on lesser known or unknown writers. The publishers decided they would take on the risk — so they send books to bookstores, and if the books don't sell, the retailer can return them. Sometimes the books can be up to a year old.

Cameron, who acts as the distributor for Wolsak and Wynn, says that the extent of returns will really start to become obvious as booksellers begin opening up their physical stores again. "For one thing, a lot of the inventory that they purchased in February will be stale now so it won't have the same opportunity to sell.

"The main problem in the industry right now is there's no cash," says Cameron.

And when there's no cash, it means that printers and designers, authors and publishers can't be paid.

As if the fallout from the pandemic on its own weren't bad enough, there is another fight publishers and authors have been battling for years: the fair use of their work under the Copyright Act.

Ruth Linka is a co-owner and associate publisher of Orca Books, well known for its vast reach in children's publishing.

"The trickier, the nuanced part of things," she says, "is that ... demand for free (books) is all of a sudden kind of exploding." This is not, as we know, a new thing but, she says, it's now being exacerbated.

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Like many of us, students and teachers were taken by surprise when the lockdown began. Linka says that teachers were in touch with her company, saying that they had class sets of certain books in the classroom, but the students didn't have them at home.

Why not seniors?

Teachers, she says, have been reaching out to them to ask whether they can read Orca books online to their classroom. Orca, says Linka, has been giving permission and access.

And authors, when approached, said "please read my book to your students."

"There's obviously printers to pay and designers and editors ... but the most important is the author, the creator and the illustrator. Their work needs to be valued and remunerated," she says.

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This is where a long-standing issue with copyright comes into play. It's a complicated issue with the idea of fair dealing at its core: educators and students can use and share small portions of work that is copyrighted. But many feel that the education sector had been taking advantage of fair dealing to simply avoid paying for large quantities of work they wanted to use.

In 2010, Access Copyright, a collective of publishers and creators, filed a tariff — a standard price — with the Copyright Board for the post-secondary sector, which would compensate writers, artists and publishers for the unlicensed reproduction and use of copyrighted materials in their classrooms.

In 2012, York University, however, opted out of the tariff, saying it would use its own fair-dealing guidelines. It continued to copy and share work with its students without payment to

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creators or publishers. A lawsuit was filed in Federal Court in 2013, with York widely being seen as a test case for other educational institutions.

In April, the court ruled that York's copyright guidelines were unfair. But it also said that tariffs aren't mandatory — individual publishers or creators, if they wanted, would have to sue for payment rather than work through Access Copyright.

“For (writers and independent publishers) this is not practical,” says Edwards. “The limit on damages is \$5,000 ... it's not worth the time or money.”

The current situation has shown that the content is valuable — teachers want to use stories told by Canadians. And now the market is demanding new, digital ways of sharing it.

“The thing is going forward this is not sustainable for the author or the publisher. We're going to have to figure out a way that people get paid for their work and teachers have what they need to teach and kids have what they need to learn,” Linka says.

She does not see the tariff ^{IS NOT} as onerous and there are provinces (British Columbia and Quebec) paying it. The fee for elementary and high schools is \$2.41 per student; in universities \$14.31 and colleges \$5.50. For that “they get access to everything,” Linka says, adding that the money is then sent back through the system “and the authors and publishers get paid — they have blanket permission to use the books in the school. It's super clean and easy,” says Linka.

“When we hold these beautiful books in our hands that an artist and writer created, how can we not think that they deserve to be paid?” she asks rhetorically. “And most authors are not J.K. Rowling; they're not making enormous amounts of money. The average author is making \$2 a book if a book is (priced at) \$20.”

Both Linka and Reisman are quick to point out that their businesses aren't the only ones facing challenges right now.

“In many ways we're just like any other small business who has a service or creates a product and we're facing challenges right now getting that product to market,” says Linka.

“I suspect it's hard for anybody that is part of the non-essential ... for anybody who has been closed for well into our third month,” says Reisman.

But this industry is feeling even more pressure looking into the future at a landscape that won't look the way it did before everything shut down in mid-March.

They are clear that this doesn't mean they're looking for a bailout. “Publishers are looking for new ways of doing things,” Linka says, whether that's bringing digital-only books to market or investing in other innovations that bring books into the hands of readers faster.

Reisman, too, accepts the changing landscape and the challenges.

“We are prepared to do our part. We are prepared to accept a good amount of the losses from this period. And we are prepared to invest.”

However, she says, “We cannot support this system under these circumstances — pricing pressure, then you get COVID, then you get all the demands to have to invest. It is not sustainable. And it is that serious.”

Edwards, meantime, is grateful that the current pandemic has shown readers and teachers and students how valuable books are.

“The demand is there, the content is valuable and useful, it’s just finding the model that will allow for payment and making the investment,” she says.

And keeping Canadian authors writing books that Canadian readers want to read.