

Not Netflix and Chill

Considering How Copyright Anxiety and Legal Chill Impacts the Higher Education Sector

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Definitions and rationale for the study

Copyright anxiety includes nervousness and apprehension associated with navigating copyright issues.

“But it gives me so much anxiety in my day to day and so I joke with a colleague in another institution. I say that I’m going to go to copyright jail.”

(Canadian Focus Group 2)



Definitions and rationale for the study

***Copyright chill* is where a legitimate use of copyright-protected material is discouraged or inhibited by the threat (real or perceived) of legal action.**

Why and to what extent is this happening? How does this compare with other countries?

OPINION

Copyright loophole for education should be plugged



KATE TAYLOR >

PUBLISHED MAY 20, 2023

“The legalized robbery of Canadian authors by the education sector is an international embarrassment and a national shame.”



[Copyright loophole for education should be plugged - The Globe and Mail](#)

Methodology and data analysis

Survey using the modified Copyright Anxiety Scale distributed to those working in higher education in Canada and the UK (n=509)

Focus groups with higher education employees in UK (5) and Canada (2)

Mixed methods (combining qualitative and quantitative data)

Preparing manuscript for publication

2023 Copyright Anxiety Scale, higher education

1. I am familiar with copyright legislation and/or copyright case law.
2. I can identify exceptions to copyright infringement.
3. I frequently have concerns about copyright.
4. I get confused trying to navigate copyright issues.
5. I am comfortable performing actions that I think might be copyright infringement.
6. I am confident that the materials I create are protected by copyright.
7. I do not feel safe using copyright-protected materials that I do not hold the rights for.
8. I worry that I do not know enough about copyright.
9. I have access to good instructions and/or policies for using copyright-protected materials.
10. It is easy for me to get help or find information about copyright.
11. I feel hesitant to ask for help with copyright issues.
12. I worry about the consequences of copyright infringement.

13. I am confident that elected officials (e.g., MPs) understand legal issues related to copyright.

14. I am confident that the senior managers / leadership team at my institution understand legal issues related to copyright.

15. I am worried about the amount of copyright infringement that goes on **at my institution.**

16. I often feel anxious in my **professional** life.

17. I have had formal **training / education** related to copyright.* Yes / No

18. True / False question about educational fair dealing.*

19. I have avoided activities or projects **in the workplace** because of copyright issues.* Yes / No

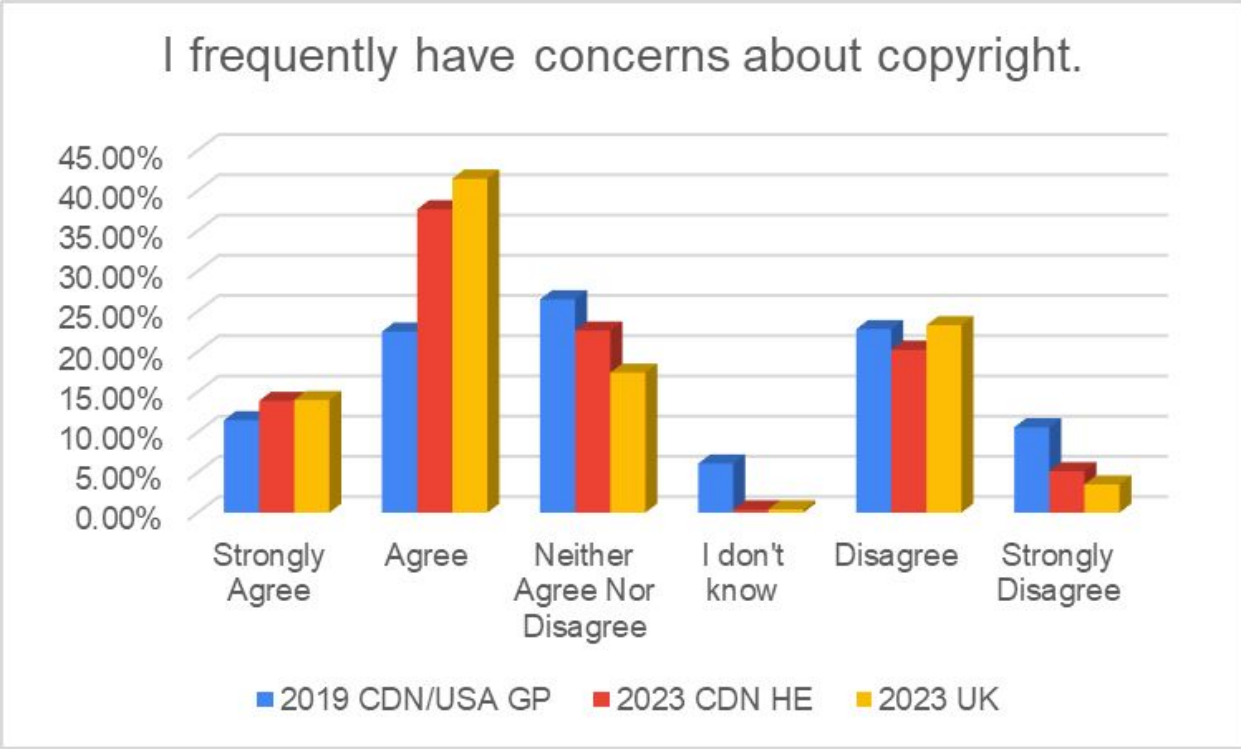
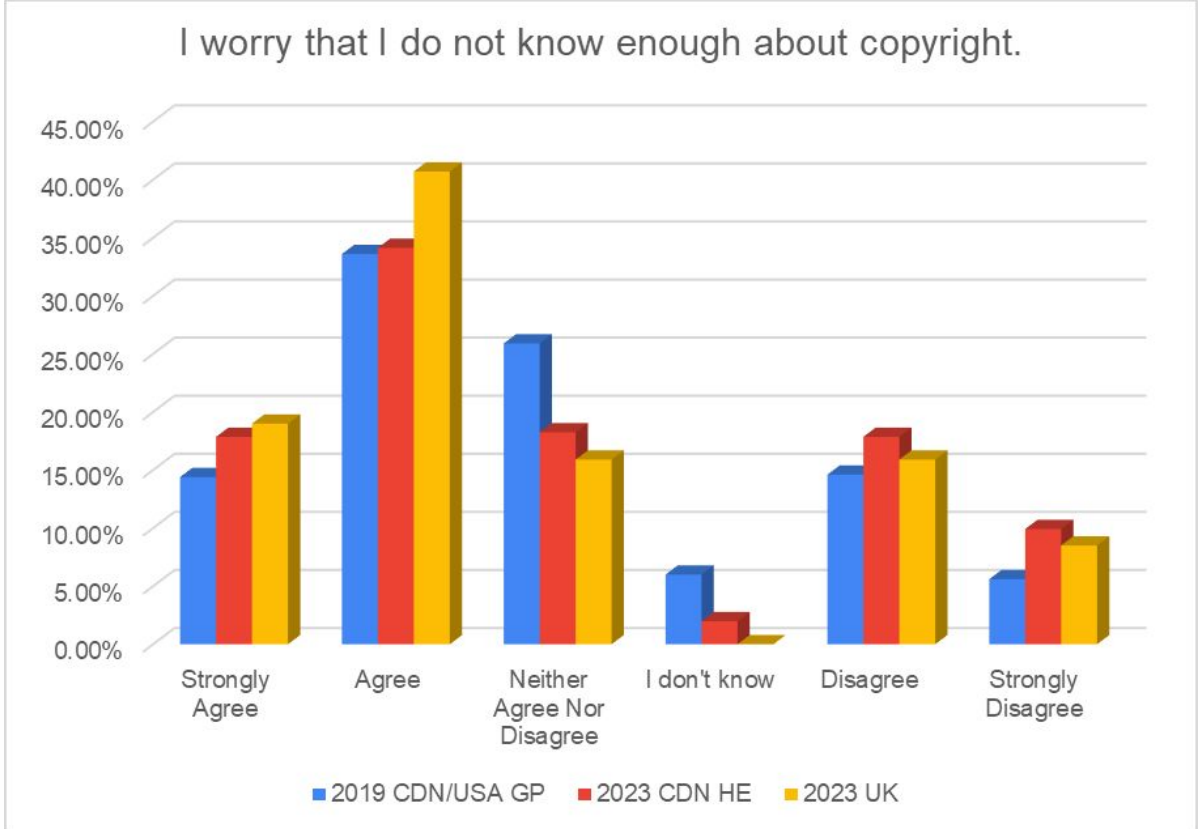
20. Can you describe a time that concerns about copyright hampered or prevented you from doing something **as part of your work?*** Yes / No

21. Any additional comments you would like to share?

*Followed by a write-in response request

2019/2023 CAS questions: Anxiety

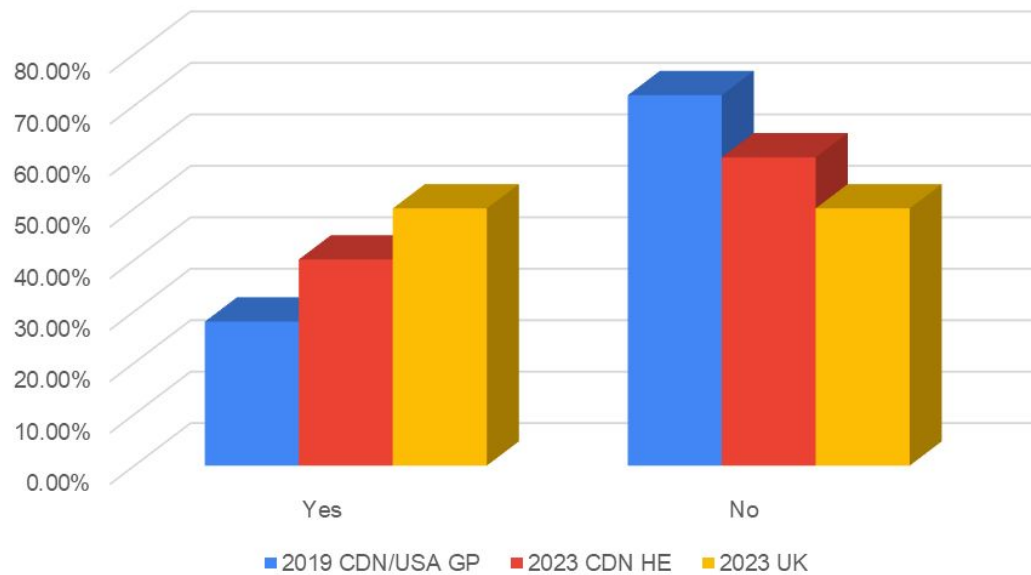
respondents in HE are more likely to worry that they don't know enough about, and agree that they frequently have concerns about, copyright



HE = higher education

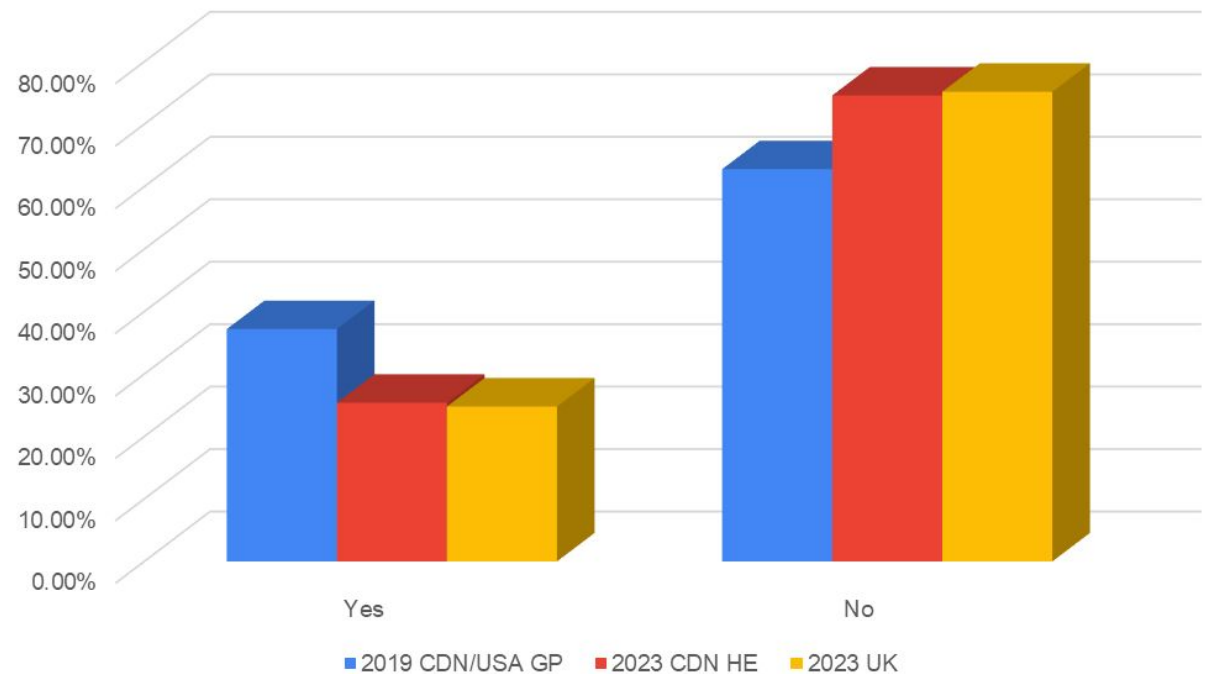
2019/2023 CAS questions: Chill?

Can you describe a time that concerns about copyright hampered or prevented you from doing something as part of your work?



2023 questions specific to hampering / avoidance "in the workplace"

I have avoided activities or projects in the workplace because of copyright issues.



respondents in HE are more likely to say that they can describe a hampering scenario but less likely to report avoidance due to copyright

Survey data: Get to know the respondents

Who?

People working in higher education

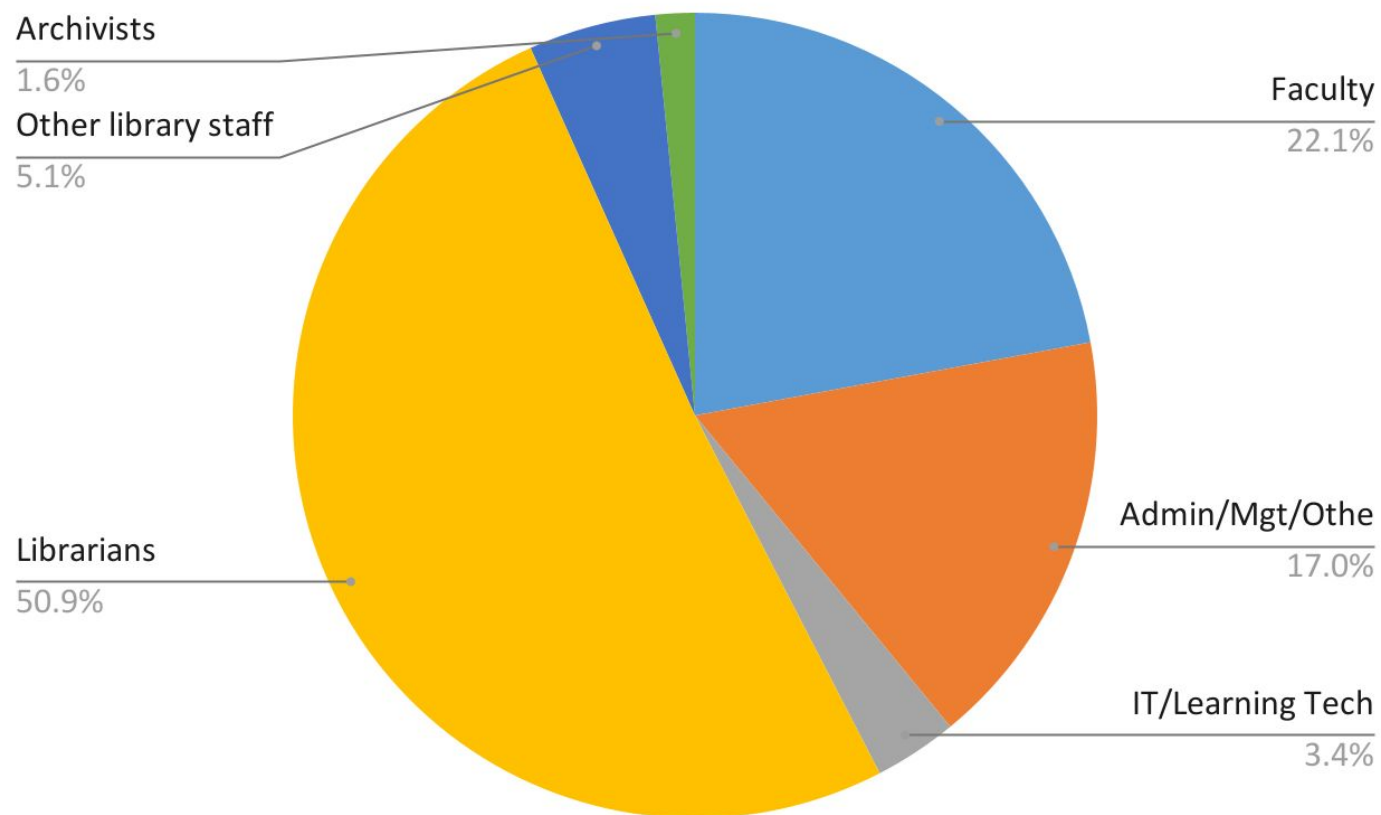
Female (n=332), Male (n=121)

Where?

UK (n=258) and Canada (n=251)

When?

June - August 2023



Survey data: Do you agree or disagree?

Variance in agreement by geography as a percentage

Less significant variance (~ <10%)	More significant variance (~ >10%)
<p>I am familiar with copyright legislation and/or case law <i>Agree or Strongly Agree</i></p> <p>73.3% UK 75.7% Canada +2.4%</p>	<p>I can identify exceptions to copyright infringement <i>Agree or Strongly Agree</i></p> <p>60.9% UK 70.5% Canada +9.6%</p>
<p>I feel hesitant to ask for help with copyright issues <i>Agree or Strongly Agree</i></p> <p>16.7% UK 14.3% Canada +2.4%</p>	<p>It is easy for me to get help or find information about copyright <i>Agree or Strongly Agree</i></p> <p>50.0% UK 70.1% Canada +20.1</p>
<p>I worry I do not know enough about copyright <i>Agree or Strongly Agree</i></p> <p>59.7% UK 51.8% Canada +7.9%</p>	<p>I get confused trying to navigate copyright issues <i>Agree or Strongly Agree</i></p> <p>46.6% UK 55.0% Canada +8.4%</p>
<p>I am confident that elected policy makers (e.g. Members of Parliament) understand legal issues related to copyright <i>Agree or Strongly Agree</i></p> <p>3.98% UK 3.88% Canada +0.1%</p>	<p>I am confident that the senior managers/ leadership team at my institution understand legal issues related to copyright</p> <p>26.0% UK 34.7% Canada +8.7%</p>

Survey data: Tell us more... write-in responses

True or false:

Fair dealing always applies when the purpose of copying and sharing a copyright-protected work is for educational purposes. Please explain your response in one or two sentences.

Respondent's understanding of fair dealing	CA	UK	Total
Yes, answer indicates that at least one aspect of fair dealing (limits, application, etc.) is understood.	163	110	273
No, answer is wholly inaccurate or otherwise conveys a lack of understanding.	56	91	147
Unclear: information provided is inconclusive.	31	21	52
No write-in response provided.	1	36	37
Total	251	258	509

Comprennent-ils ?

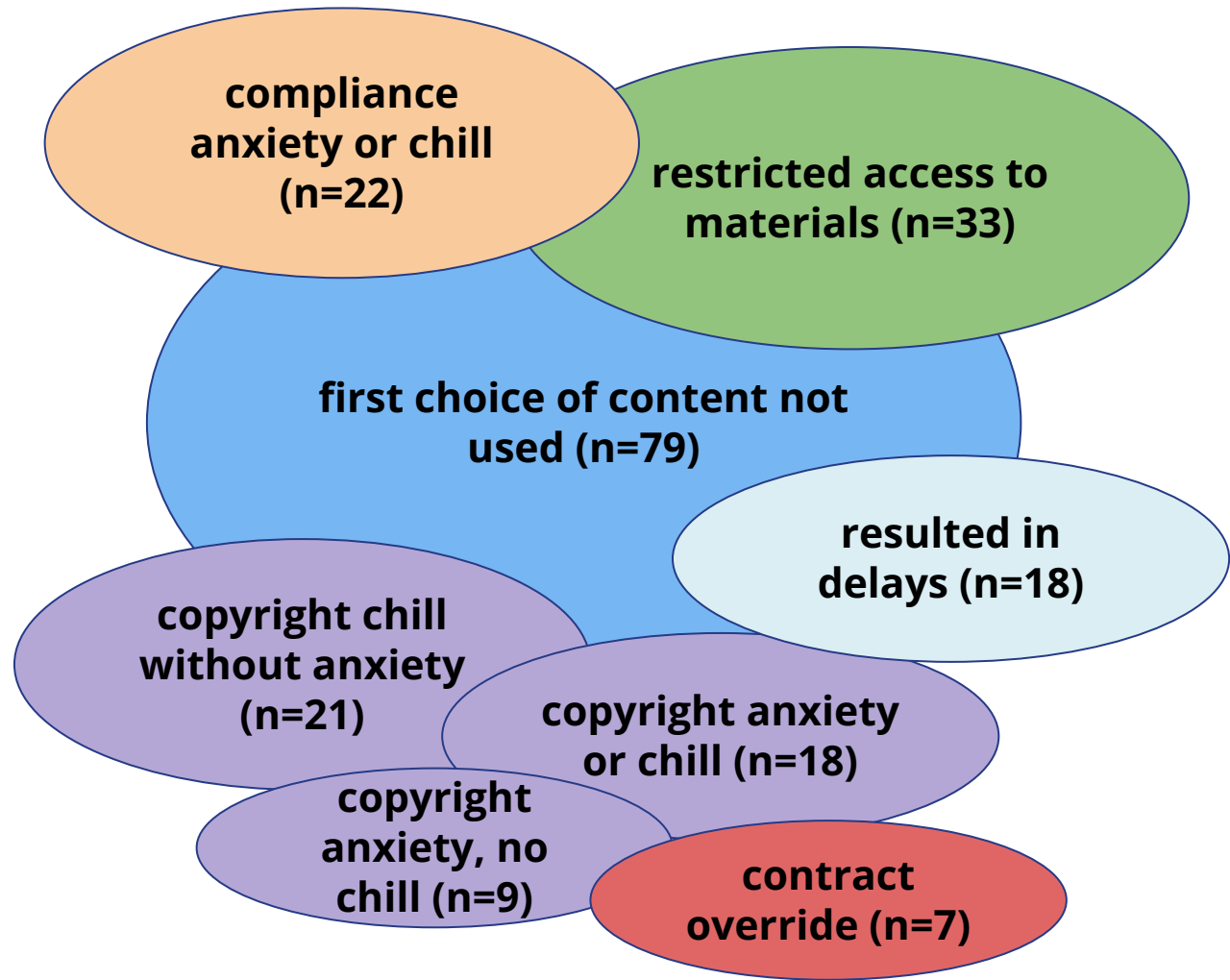


65%



43%

Survey data: Tell us more... write-in responses



I have avoided activities or projects in the workplace because of copyright issues. (Yes/No)

Can you describe a time that concerns about copyright hampered or prevented you from doing something as part of your work?

If you answered yes to one of the previous two questions, please describe the experience in one or two sentences.

204 usable write-in responses

If you would like to discuss this further as part of a virtual focus group...

Survey data: Location, location, location

Which province* is least and most likely to have had respondents whose work was hampered or prevented by copyright concerns?

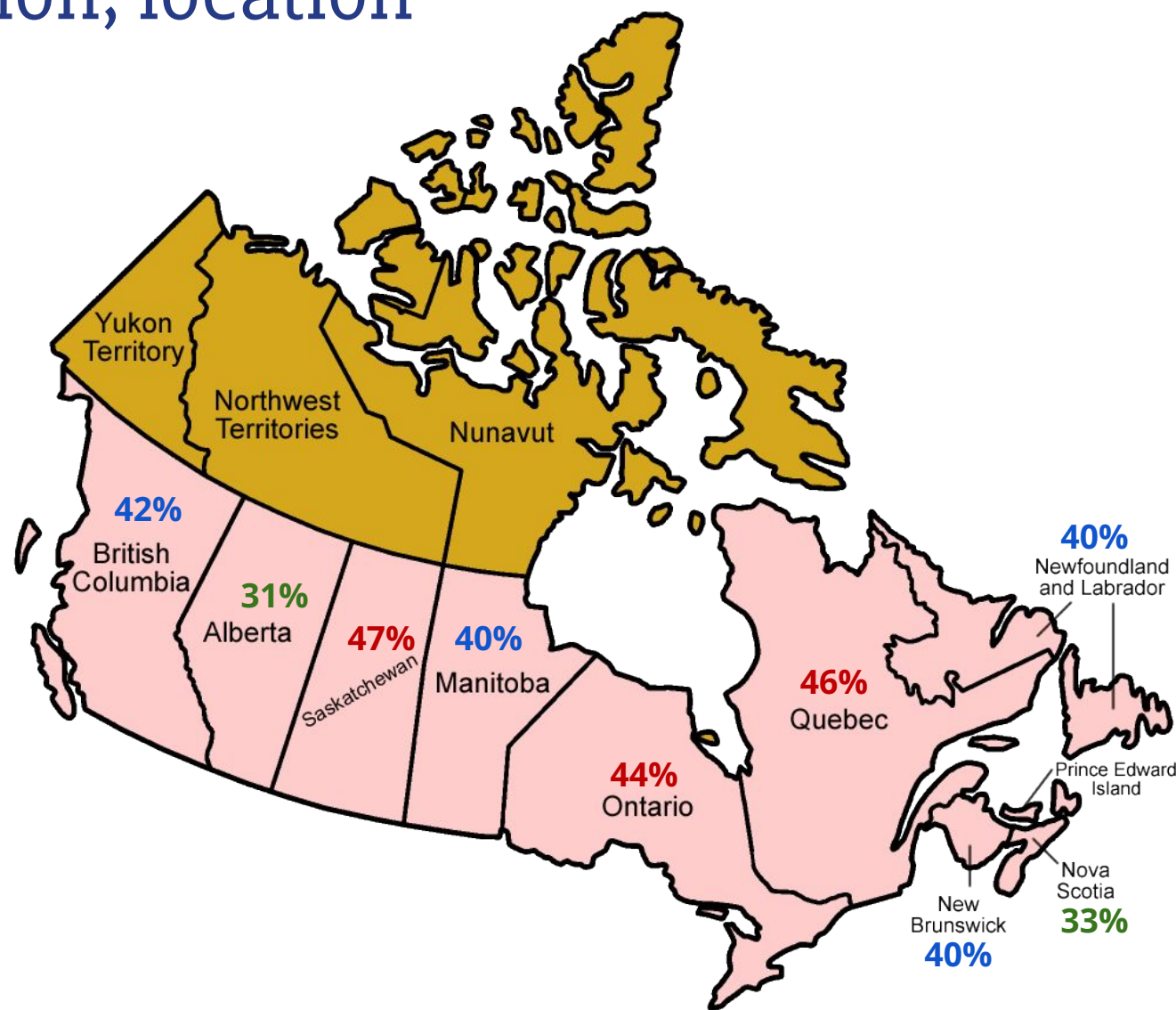
Least likely = 30.6%

Most likely = 46.67% / 46.34%

Canadian respondents who said they were hampered or prevented... by place of employment.

College = 42.5%

University = 40.6%



*Only one respondent from PEI and none from the Territories

And now over to our friends in the UK....



Image created by Google Gemini: London bus crossing Westminster Bridge

Focus group data: How is copyright anxiety experienced? (1.1)

The experience can be categorised into five main areas including:

- 1. Feeling frustrated**
- 2. Feeling uncomfortable about needing to act as a gatekeeper**
- 3. Feeling uncomfortable with uncertainty**
- 4. Feeling inadequate / not having the authority often ascribed to lawyers, which could be likened to 'imposter syndrome'**
- 5. And feeling it was a constant challenge, even when one gained lots of experience.**

Frustration

“ **The hearsay thing that come up a lot amongst academics is ‘fair use’.** And that frustrates me knowing because they obviously **don't read anything I put out,** don't come to any of the sessions, don't watch any of the videos and they just keep talking about fair use for education to do anything they like basically.

(UK Focus Group 2)

“ [on the topic of text and data mining and contractual terms]...**something in my contract is saying no, you can't do that and so I get very frustrated because I feel like you've already licensed the content ...but I feel like I can't say that because I probably legally can't** but again it's something in this contract that saying that whatever copyright is allowing me to do, I've agreed not do that lest [service provider] come and try to sue me which they probably would.

(Canadian Focus Group 1)

Feeling uncomfortable about needing to act as a gatekeeper

“...in certainly all of the institutions I've worked in, the library and the librarians were seen as being the experts on copyright. And ...I've worked in a few now and **it's always been a library role really to sit with copyright and do that almost policing.**

(UK Focus Group 1)

“So this has put me in the position -- and this is just the most recent example -- of being the copyright police. Which fills me with frustration and anxiety. **Nobody likes to be the single person on campus who is ruining everybody else's party.**

(Canadian Focus Group 2)

Feeling uncomfortable with uncertainty

“ We have decisions on whether something is in copyright isn't in copyright and when it will be out of copyright. **But the things that to sort of left in the grey area, it is basically it's left to us and our decisions and we tend to take a more conservative approach and more risk averse approach.** So we're not using those things for fear of sort of doing wrong with them.

(UK Focus Group 2)

“ ... it's not always what I find to be a useful approach when **you really just need to know if something is going to get you and the university and the instructor in trouble and because there are so many grey areas in the copyright guidelines** we have sometimes where things exceed in one direction or another .

(Canadian Focus Group 1)

Feeling inadequate / not having the authority often ascribed to lawyers, which could be likened to 'imposter syndrome'

“ And I think I sometimes feel a bit anxious that, you know, cause **I'm supposedly the expert now and I feel like I'm not.** And, you know, I've met, they've met with these IP people who are lovely. **They've all got legal backgrounds, you know, they're all studied law. So it was feel a bit intimidated by them.**

(UK Focus Group 4)

“ My office is viewed as a determining entity but is not in fact a determination entity so people view me as having more authority than I have in actuality. **Because we are not lawyers, we are not offering legal advice, we are offering a professional opinion** and I try to communicate that in one to one conversations where it's like you as **the other person needs to be the one to make this ultimate decision.**

(Canadian Focus Group 1)

Feeling it is a constant challenge, even when one gained lots of experience.

“ ...and that actually it hasn't really changed. So those feelings of uncertainty and anxiety around copyright when you're new in the profession. I remember that well, ...I know that it wasn't any different when I really started in the late 90s really is as a librarian.

(UK Focus Group 1)

“ I feel just as fearful about copyright and giving advice on copyright to the faculty I work with as I was on the first day I started on the job, as a new grad.

(Canadian Focus Group 2)

The impact of copyright anxiety

In higher education there are at least three clear areas where copyright anxiety can lead to legal chill or other hampering of academic work, including:

- Teaching and learning
- The research process
- Library services



Why does copyright anxiety exist? (2)

- **The nature of copyright law and the political economies / ideologies / value systems in which the law is situated (2.1)**
- **Institutional Policy within HEIs (2.2)**
- **Practice: individual knowledge, skills and attitudes (2.3)**
 - Making sense of the law (2.3.1)
 - Fear and consequences (2.3.2)
 - Communicating the messages (2.3.3)
- **The relationship between the above three factors, including roles, hierarchies and power structures (2.4)**

Addressing copyright anxiety (3)

What responses to copyright anxiety do focus group participants report?	What do they think works (or think could work)?	What do they think does not work?
<ul style="list-style-type: none">- Develop policies- Educate others about copyright- Seek out more information on copyright- Go on training courses- Join professional communities- Have conversations with colleagues- Avoid or transfer to others	<ul style="list-style-type: none">- Communities of practice and community building activities- Interactive / active learning / scenarios / games / humour- Framing copyright as a positive / empowering / upskilling people in digital literacies- Copyright can be aligned with other regulatory and ethical issues (e.g. encouraging original work)- Having clear policies and guidance- Using trusted sources of information- Viewing copyright work as interesting and valuable	<ul style="list-style-type: none">- Can be too much / not enough information- Finding copyright information can be hard and is difficult to interpret- Training can be passive / overly theoretical / traditional lecture approach- One-off training sessions mean people don't retain knowledge if they don't practice- Viewing copyright simply as 'problem solving' (deficit model)- Taking on responsibility for other people's decisions

Discussion Questions

- **How do these responses make you feel?**
- **How might these data help make a difference at your institution?**
- **What can the project team do to help address copyright anxiety and legal chill?**
- **How can we raise awareness - would a statement or infographic be helpful?**
- **Who wants to help?**

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CREDITS

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REFERENCES

Morrison, C & Secker, J. (2017). Understanding librarians' experiences of copyright: findings from a phenomenographic study of UK information professionals. Library Management, 38 (6/7)

Morrison, C. Secker, J. (2022). Copyright Education and Information Literacy. In: Navigating Copyright for Libraries: Purpose and Scope. (pp. 285-318). Walter de Gruyter. ISBN 3110732009 doi: 10.1515/9783110732009 <https://openaccess.city.ac.uk/id/eprint/28858/1/>

Morrison, C & Secker, J. (2017b). Understanding librarians' experiences of copyright: findings from a phenomenographic study of UK information professionals. Library Management, 38 (6/7)

Secker, J. & Morrison, C. (2016) Copyright and E-Learning: A guide for practitioners. Facet Publishing: London, 2nd Edition <http://www.facetpublishing.co.uk/title.php?id=300600#.XuofAWhKjDc>

Wakaruk, A., Gareau-Brennan, C., & Pietrosanu, M. (2021). Introducing the Copyright Anxiety Scale. Journal of Copyright in Education & Librarianship, 5(1). <https://doi.org/10.17161/jcel.v5i1.15212>

Copyright Anxiety Scale Cross Tabulations, June 2021. <https://doi.org/10.7939/r3-ptg3-5n82>

Copyright Anxiety Scale Frequency Tabulations, September 2019. <https://doi.org/10.7939/r3-y3tq-a337>