REDACTED VERSION

ACCESS COPYRIGHT
EXHIBIT AC-8

Witness Statement of David Swail

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WITNESS STATEMENT OF DAVID SWAIL

September 11, 2013

1. David Swail is the president and CEO of McGraw-Hill Ryerson Limited ("MHR"). Mr. Swail has worked in the publishing industry in Canada for the past 25 years.

2. This witness statement is based on the personal knowledge, information and belief of the witness.

A. About McGraw-Hill Ryerson

3. MHR is a Canadian public company whose majority shareholder is McGraw-Hill Education. MHR has three divisions: School, Higher Education and Professional.

4. MHR's Higher Education division publishes and distributes both printed works and digital works. MHR publishes in the areas of business and economics, the sciences, engineering, math, computer science, the social sciences and humanities. Indigenous publications (i.e., Canadian books for the Canadian market) and adaptations of U.S. McGraw Hill Education works for the Canadian market make up the majority of the MHR's higher education list.

B. Investment in Digital Innovation

5. Over the last several years, there has been a tremendous acceleration in the pace of digital innovation. This innovation has presented opportunities but also placed great demands on MHR's business. The market is raising expectations for new digital products and services which is putting additional pressures on MHR to redirect its investment into new digital resources. MHR must meet those customer expectations for information at their fingertips, supported around the clock, instantly sharable and instantly searchable. This has meant a very significant reinvestment in the business.

6. MHR is responding to market pressures by making its products more affordable to address market concerns about pricing, by offering digital solutions bundled with print and by offering custom content in response to customer demands.

7. In order to compete, MHR must make itself more relevant with the addition of digital products at the same or lower price as its print offerings. Generally, the prices of the products offered by MHR have not increased as a result of the addition of digital, nor have MHR's revenues increased. However, the upfront costs of converting content to digital and offering digital enhancements are large, as there are high costs associated with sourcing the necessary skills, maintaining technical support and building and maintaining the required infrastructure.

8. In digital, MHR offers a variety of learning tools and solutions, including:

- McGraw-Hill Connect, a web-based assignment and assessment platform where instructors can deliver assignments, quizzes and tests online. Connect integrates grade reports easily with course management systems ("CMS") such as WebCT and Blackboard and provides online access to online editions of MHR textbooks;

- McGraw-Hill Create, a service that allows educators to choose from thousands of MHR textbooks, articles, legal and business cases and readings to create customized textbooks and course materials; and

- LearnSmart, an adaptive learning program that develops personalized learning pathways to help students study more efficiently and improve retention.

9. In the higher education sector, print continues to represent approximately [redacted] of MHR's revenues. Approximately [redacted] of MHR's revenues are coming from products bundled with digital. These sales are roughly doubling each year.

10. Investments into developing digital resources require capital. As MHR's revenues and profits decrease, so will its investment into digital and the development of innovative digital learning solutions. This harms MHR's ability to compete in the market.

C. Revenues from Secondary Licensing

11. Secondary licensing royalties are a net contribution to MHR's business and are virtually all from Access Copyright. For post-secondary educational institution copying, MHR received approximately [redacted] from Access Copyright in 2011 and [redacted] in 2012.

12. For elementary and high school copying, MHR received approximately [redacted] from Access Copyright in 2011 and [redacted] in 2012, plus an additional [redacted] per year as a result of the retroactive payment due from the certification of the *Access Copyright Elementary and Secondary School Tariff*, 2005-2009.

D. The AUCC and ACCC "Fair Dealing" Policies

13. MHR is aware that the Association of Universities and Colleges of Canada ("AUCC") and the Association of Canadian Community Colleges of Canada ("ACCC") adopted "fair dealing" policies setting out their interpretation of fair dealing in the fall of 2012. The ACCC fair dealing policy dated August 30, 2012 is filed as Exhibit AC-2JJ to the Levy et al Witness Statement Exhibit AC-2 and the AUCC fair dealing policy, which is substantively identical to the ACCC's policy, is filed as Exhibit AC-2KK. Together, the policies are referred to herein as the "Policy".

14. MHR is also aware that a number of universities and colleges have stopped paying royalties to Access Copyright.

15. Many easy, affordable and evolving commercial offerings are available as other means to acquire content, as an alternative to what is proposed in the Policy.

16. MHR is already seeing the impact of equivalent fair dealing policies in the K-12 sector. MHR is aware that the Council of Ministers of Education Canada (CMEC) have promoted a policy setting out their interpretation of fair dealing. CMEC's publication which includes its fair dealing policy can be found at the following URL:

http://cmec.ca/Publications/Lists/Publications/Attachments/291/Copyright_Matters.pdf.

17. MHR is also aware that all Ministries of Education in Canada (excluding Quebec) and the school boards in Ontario have ceased paying royalties to Access Copyright as of January 1, 2013.

18. Loss of secondary licensing revenues is a direct loss to MHR's bottom line (i.e., no direct expenses are attributed to the revenues). In order to replace the revenues historically received from Access Copyright, MHR would have to make approximately [redacted] times the lost revenues in sales. So, MHR would have to make an additional [redacted] in sales revenues, in a declining industry market.

D. The Canadian Educational Publishing Market

19. The last several decades in the publishing business has seen an opportunity for educational publishers to develop materials to support the Canadian marketplace. MHR's opportunities have come from both creating original Canadian products and adapting foreign products. Canadian content opportunities have been in a 3%-5% growth mode per year. Ten years ago, content adapted for the Canadian market represented approximately 30% of MHR's sales. Today 70% of MHR books sold in Canada include Canadian content.

20. MHR and other educational publishers are significant investors in the development of Canadian materials for the Canadian marketplace. MHR's investment in Canadian indigenous products and adapting works to cover uniquely Canadian subject-matter is important to ensure that materials resonate with Canadian learners. This focus on Canadian content has meant continued investment by MHR in resources and employment.

21. Canada is a small market for educational goods. If there is erosion of that market, MHR and other publishers will be unable to invest to the same level in Canadian content, whether adapted or indigenous. MHR will reduce investment in Canadian resources and will publish fewer materials in more specialized subject areas. There will be a resulting loss of diversity in published works. The greatest impact will be felt with indigenous works, i.e. those works created and published in Canada, as this is where the required investment is the greatest. As a result, the market will see fewer Canadian resources.

22. If revenues decrease, MHR will employ fewer people and will spend less on a host of different suppliers, from writers, to photographers, to illustrators, editors, designers, printers and digital developers. MHR will also be unable to invest to the same extent in its transformation to digital.

23. Such a result will mean that there will be less relevant materials in Canadian classrooms, increased reliance on foreign content and less effective resources. This is to the detriment of students, instructors, authors and publishers alike: there will be a weakening of MHR's competitive advantage as well as the competitive skills of Canadian students and instructors in a global market. Retaining investment in the Canadian business is critical: it feeds the ecosystem that has been nurtured over the last few decades. In order to retain investment, it is necessary to ensure there is a reasonable prospect of return on investment in Canada. To fail to do so would result in a return to the position that Canada was in 25 years ago: as a net importer of educational goods.