Copyright in Canadian Post-Secondary Education

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Overview

- Copyright Context 2012
- Copyright Collectives
- Proposed Post-Secondary Educational Tariff
- UWO/U of T Agreements and the AUCC Model License
- Potential Motivation for Signing
- Implications and the Future of Academic Copyright
Copyright Context 2012

• Over the past year, the issue of copyright has been brought to the forefront of discussion on Canadian university campuses

• Access Copyright, a copyright collective society, has played a major role in raising these questions

• Universities and colleges have had to decide whether to sign licensing agreements with Access Copyright
Copyright Collectives

• Section 70.1 of the Copyright Act allows for copyright collective societies

• Collectives represent the interests of copyright owners and authors

• Collectives do not own copyright; they are authorized by copyright owners to manage and license copyright

• Collectives are intended to streamline the copyright clearance process through blanket licenses
Access Copyright

- Formed in 1988 by groups of authors and copyright owners, Access Copyright was previously called the Canadian Reprography Collective

- Represents the reproduction rights of copyright owners

- Sells blanket copyright licenses to educational institutions, that authorize certain uses of copyrighted works

- Many post secondary institutions have had agreements with Access Copyright for the past several years
Post Secondary Educational Tariff

• In 2010, the copyright license that many post secondary institutions held with Access Copyright expired

• Section 70.1 of the act presented Access Copyright with two options:
  • Negotiate individual license agreements
  • Apply to the Copyright Board of Canada to set a tariff

• Access Copyright elected to apply for a tariff on March 31, 2010
Concerns with the Proposed Tariff

- Unjustified fee increases
- Overbroad definitions of key terms
- Attempts to claim compensation for copying outside the scope of the Copyright Act
- Reporting and Survey Requirements
- Rising number of alternatives
Unjustified Fee Increase?

- A $45.00 royalty fee assessed per FTE (Full Time Equivalent Student)

- Previous license fee for most institutions was $3.75 per FTE and a 10 cent per page fee for course packs

- Course pack use has declined, and the increase has been called unjustified by some
Overbroad Definitions

“Copy” means any reproduction, in any material form whatever, including a digital copy, that is made by or as a consequence of any of the following activities:

(a) reproducing by reprographic process, including reproduction by photocopying and xerography
(b) scanning a paper copy to make a digital copy
(c) printing a digital copy
(d) transmission by electronic email
(e) transmission by facsimile
(f) storage of a digital copy on a local storage device or medium
(g) posting or uploading a digital copy to a secure network or storing a digital copy on a secure network
(h) transmitting a Digital copy from a secure network and storing it on a local storage device or medium
(i) projecting an image using a computer or other device
(j) displaying a digital copy on a computer or other device and
(k) posting a link or hyperlink to a digital copy

(UWO AC Licensing Agreement: S1)
Reporting and Survey

• Surveys and reporting requirements are mandated by the tariff

• Allow Access Copyright to monitor the volume and use of copyrighted works on campuses

• Given the broad definitions of key terms, reporting requirements may be intrusive and burdensome
Alternatives

- Alternative ways of using copyrighted works have arisen:
  - Library Digital Licenses
  - Open Access
  - Creative Commons
  - Fair Dealing
Reaction to the Proposed Tariff

• Provoked over 100 formal objections

• Strong objections came from the CLA, CFS, CAUT, and CASA

• Some universities and colleges across Canada made the decision to combine funds and have the Association of Universities and Colleges Canada (AUCC) oppose the proposed tariff

• Over thirty AUCC institution members elected to opt-out of the proposed tariff
Reasoning for the Proposed Tariff?

• What might have motivated Access Copyright to propose this tariff?

  • Upward Price Creep
  • The Economics of Access Copyright
  • Business Model?
  • Attempt to rollback user rights?
UWO and U of T Break Ranks

• In a surprise move, UWO and U of T announced on January 30th 2012 that they had reached a licensing agreement with Access Copyright

• Breaking ranks from other AUCC institutions, UWO and U of T entered a license

• Features a $27.50 fee per FTE student
In another surprise, the AUCC announced on April 16th 2012 that it had negotiated a model license with Access Copyright.

- Features a $26.00 fee per FTE student
- This license is a non-binding model, each of the individual AUCC institutions has to decide whether to sign the model
- On April 24th, 2012 the AUCC announced it was dropping its objection to the proposed tariff at the Copyright Board
ACCC Negotiates Model License

• On May 29th, 2012, the Association of Community Colleges in Canada (ACCC) announced it had negotiated a model license with Access Copyright

• Features a $10.00 fee per FTE student
Fair Dealing Hall of F/Shame

- Toronto based lawyer, Ariel Katz, maintains a running tally of institutions that have and have not signed licenses

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Motivation for Signing?

• What motivated UWO and U of T to voluntarily sign an Access Copyright license and the AUCC / ACCC to negotiate model licenses?

• Certainty?
• Indemnification?
• Failure to appreciate copyright user rights?
• Effort to avoid a costly fight?
The Future of Academic Copyright?

• An increased number of alternatives to the Access Copyright license

• Universities that rejected Access Copyright have successfully begun to deal with copyright on their own

• Copyright in Canada has undergone a shakeup and shifted towards user rights
Thank you

• Please consider attending:

• **Access Copyright: What does it mean for Western? A Librarian’s Guide**

• Thursday October 11\textsuperscript{th}, NCB 293, 12pm – 1pm
References


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