

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
- Check out *“Objections to the Proposed Access Copyright Post-Secondary Tariff and its Progeny Licenses: A Working Paper,”* by Sam Trosow for more

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

AUCC Negotiates Model License

- 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

Scoreboard

Fame	Shame
19	22

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 11th, NCB 293, 12pm – 1pm

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