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Tariffs and Access Copyright

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Introduction

- Which groups are dealing with copyright tariffs from Access Copyright?
- The K – 12 tariff
- The Postsecondary tariff
- What's next?

Definitions

What is a **Collective Society**?

“...a society, association or corporation that carries on the business of collective administration of copyright or of the remuneration right conferred by section 19 or 81 for ... those ... authorize it to act on their behalf in relation to that collective administration, and

(a) operates a licensing scheme, ... or

(b) carries on the business of collecting and distributing royalties or levies payable pursuant to this Act;”

What is Access Copyright?

The legal name is the *Canadian Copyright Licencing Agency*.

The trademarked names are *Access Copyright* and *CanCopy*.

Access Copyright is the collective society for reprographic copies of print works in 9 provinces and the 3 territories.

Copibec is the collective society for reprographic copies of print works in Quebec.

Tariff vs. Licence

70.12 A collective society may, for the purpose of setting out by licence the royalties and terms and conditions relating to classes of uses,
(a) file a proposed tariff with the Board; or
(b) enter into agreements with users.

Current Access Copyright Tariffs

K – 12 School Boards

- Tariffs filed for 2005 – 2009 and 2010 – 2012

Post Secondary Institutions

- Interim tariff 2011 – 2013

Provincial and Territorial Governments

- Tariffs filed for 2005 – 2009 and 2010 – 2014
- \$24.00 per FTE (Civil Servant)

K - 12 from licence to tariff

- CMEC (the Council of Ministers of Education) negotiated the last K – 12 Access Copyright licence.
- With the expiration of the last K-12 licence on August 31, 2005, Access Copyright opted to apply for a tariff from the Copyright Board of Canada.

The K – 12 Tariff

- In June 2009, the Copyright Board issued a four year tariff.
- The new tariff was \$5.16 per student.
- For the years 2005/2006 through 2007/2008, the tariff was reduced to \$4.64 per FTE.
- Since the school boards had already paid \$2.45 per FTE, they owed a retroactive payment of \$2.19 per FTE for the first three years and a payment of \$2.71 per FTE for the last year.
- The Copyright Board denied that teacher handouts to students could be considered private study under fair dealing.

The Federal Court of Appeal

- CMEC appealed the Copyright Board's ruling to the Federal Court of Appeal.
- The Appeal Court ruled in favour of Access Copyright: *“Private study” presumably means just that: study by oneself... When students study material with their class as a whole, they engage not in “private” study but perhaps just “study.”* (P38)
- The Supreme Court has now (May 5, 2011) agreed to hear CMEC's appeal of the FCA judgment.

Post Secondary Tariff

- The Access Copyright Post Secondary licences expired on August 31, 2010. A four month extension was signed by most institutions through December.
- Access Copyright applied for a tariff from the Copyright Board.
- The Copyright Board approved an interim tariff on December 23, 2010. The interim tariff is very similar to the old licence, except for Schedule G.
- Institutions need to opt into Schedule G which includes the worst parts of Access Copyright's tariff proposal.
- Access Copyright is asking for \$45.00 per FTE student per year.

AUCC/ACCC

- AUCC and ACCC are representing their member institutions in the hearings before the Copyright Board.
- The AUCC (Association of Universities and Colleges of Canada) and the ACCC (Association of Canadian Community Colleges) have developed a fair dealing policy. Latest official version:
<http://collections.library.ubc.ca/copyright>.
- Several institutions are opting out of the tariff and planning to operate only under the Fair Dealing Policy.
- Other institutions are considering opt out of the interim tariff in August.

Definitions Section – Schedule G

- *2(g) Projecting an image using a computer or other device.* Educators are allowed to do this under S 29.4 of the Copyright Act.
- *2(h) Displaying a digital copy on a computer or other device.* Educators are allowed to do this under S 29.4 of the Copyright Act.
- *2(i) posting a link or hyperlink to a digital copy.* A link is not a copy under the Copyright Act.
- The interim tariff doesn't seem to recognize any instructor behaviour as being covered by fair dealing.

Post Secondary & Digital Issues

- Access Copyright has had dropping revenue from the post secondary sector over several years
- Canadian university libraries on average are now spending more than 50% of their collections budgets on digital collections.
- For Universities, copyright royalties would go up 3.5 to 4 times the rate under the old licence.
- It looks like Access Copyright's reprographic business model is failing and they are using the tariff process to force their way into the digital arena.

Conclusions from K – 12 Process

- Filing and settling a tariff before the Copyright Board is a lengthy process that takes several years.
- It is hugely expensive upfront in legal fees and years later in paying retroactively for a copyright tariff.
- Neither the Copyright Board nor the Federal Court of Appeal appear sympathetic to teacher distributed material being considered a fair dealing.

Teacher Distribution to a class

- According to the Supreme Court in CCH: *It may be relevant to consider the custom or practice in a particular trade or industry to determine whether or not the character of the dealing is fair.*
- According to the Federal Court of Appeal this would not be covered by fair dealing: *When students study material with their class as a whole, they engage not in “private” study but perhaps just “study.”*

What's next?

- Will public libraries be the next to have tariffs rather than licences?
- How will the Supreme Court affect the tariff process?
- Over the past few years, many of us have been surprised to learn how much power the Copyright Board has. Will libraries and other groups start lobbying Parliament to limit the powers of the Copyright Board and the Collective Societies?