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Access Copyright & Technology: Legal and Policy Issues in Education

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Access Copyright & Technology



Legal and Policy Issues in Education

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What is Copyright?

- ✎ copyright in Canada is a legal concept of intellectual property
- ✎ it affords to individuals or organizations certain exclusive rights in dealing with artistic and intellectual works
- ✎ its purpose is to encourage the creation of these works for the betterment of society
- ✎ *Copyright Act*, RSC 1985, c C-42 (amended 2012)
- ✎ Supreme Court decisions (*CCH v LSUC* [2004], *Alberta (Education) v Access Copyright* [2012])
- ✎ Copyright Board sets tariffs for royalty payments
- ✎ contracts

What is Copyright?

- ✎ “fair dealing” refers to certain uses of copyrighted materials that are not considered infringement
- ✎ the test for whether or not a given dealing is “fair” was set out in the Supreme Court case *CCH v Law Society of Upper Canada*
- ✎ “The fair dealing exception, like other exceptions in the *Copyright Act*, is a user’s right.”
- ✎ goal is to maintain the proper balance between rewarding authors and allowing the public to make use of works

Who are Access Copyright?

- ✎ Access Copyright are a collective organization representing the interests of copyright owners
- ✎ act on behalf of copyright owners in entering into license agreements with other organizations
- ✎ collect royalties and distribute to owners
- ✎ until December 2010, Canadian universities had agreements with Access Copyright permitting certain limited uses of works in the organization's repertoire
- ✎ fees are paid by students
- ✎ as of 2013 many universities have opted out of agreements

What has changed?

- ∞ increase in number of digital works (born digital or digitized)
- ∞ Internet technologies present unprecedented ease of access, reproduction, and distribution
- ∞ copyrighted works can be electronically copied and pasted into other documents, e-mailed, shared in the cloud with technologies such as course management websites
- ∞ these uses were not envisioned when copyright law was originally developed
- ∞ regulatory schemes that were sufficient or ideal for previous uses of copyrighted works are not ideal today

What has changed?

- ∞ July 2012: Supreme Court issues its decision in *Alberta (Education) v Access Copyright*
 - reaffirmed that fair dealing is a “user’s right”
 - the provision is to be interpreted broadly
- ∞ November 2012: the provisions of Bill C-11 come into force, amending the *Copyright Act*
 - education, parody, and satire are added to the list of fair dealing purposes (s. 29)
 - use of material freely available on the Internet (s. 30.04)
 - non-commercial user-generated content incorporating other materials (s. 29.21)
 - permitting reproduction of works for display (s. 29.4)

Implications for universities

- ✎ at the end of 2010, university licenses with Access Copyright expired
- ✎ earlier in the year Access copyright had applied to the Copyright Board for tariff certification
- ✎ some universities signed new agreements with the collective that account for digital uses of works in its repertoire
- ✎ in 2012 Western and U of T signed a license that saw fees increase from \$3.75 to \$27.50 per year

Implications for universities

- ✎ agreement was criticized on several grounds:
 - over-broad definition of “copying” (e.g. posting a hyperlink to a copyrighted work or displaying a work on a projector screen, the latter of which is inconsistent with s. 29.4 of the *Copyright Act*)
 - right of Access Copyright to audit records, including “right of access through the whole or any part of the premises of the Licensee” [including secure network]
 - requiring royalties for uses that would likely fall under fair dealing (e.g. copying an entire article from a periodical for non-commercial, educational purposes)

Implications for universities

- ∞ other universities, such as UBC and UPEI, have declined to re-sign an agreement with Access Copyright
- ∞ rely on fair dealing, other educational exceptions
- ∞ public domain, publicly licensed (Creative Commons), and open access resources
- ∞ linking to online materials rather than re-hosting
- ∞ licenses with individual publishers
- ∞ copyright offices, awareness initiatives
- ∞ creation of institutional copyright and fair dealing policies

Access Copyright and MOOCs

- ∞ massively open online courses (MOOCs) available to anyone with Internet access
- ∞ University of Toronto currently administers several courses through [Coursera](#)
- ∞ if a Coursera student wishes to make a copy of a repertoire work in support of her study, is this use covered under the Access Copyright license?



Conclusion

- ⌘ dramatic changes in the way education is delivered
- ⌘ more are expected
- ⌘ copyright law and policy must account for these changes in a way that will allow it to fulfill its purpose