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Open Access: Historical Highlights, Issues and Policies

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Open Access

Thursday October 24th, 12-1:20, NCB 285

*Historical
Highlights,
Issues, and
Policies*

Scientific Journals: History & Market Failure

Paul St-Pierre, LIS PhD Student

Digital Textbooks: Issues in Creation, Access & Use

Lisa di Valentino, LIS PhD Student

A Holistic Approach to Open Access, Campus Copyright, and Library Licensing

Samuel E. Trosow, Associate Professor, Faculties of Law and Information & Media Studies

Print publishing relies on enclosure of information in a physical object (book). The digital environment potentially increases access (online journals). Publishers, however, can implement control beyond that which is possible in a print world; for example, license agreements that try to restrict user rights such as fair dealing. Open access is an increasingly popular publishing option, and represents a progressive application of technology and alternatives to traditional intellectual property.

Join us for this moderated panel discussion with University of Western Ontario scholars, to learn about the origins of problems in scholarly publishing, current open access initiatives, and educational policies.





Scientific Journals: History & Market Failure

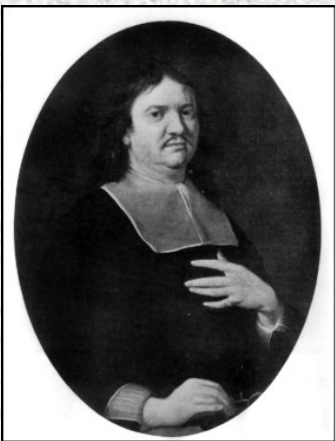
Paul St-Pierre, LIS PhD Student

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ACCESS WEEK**

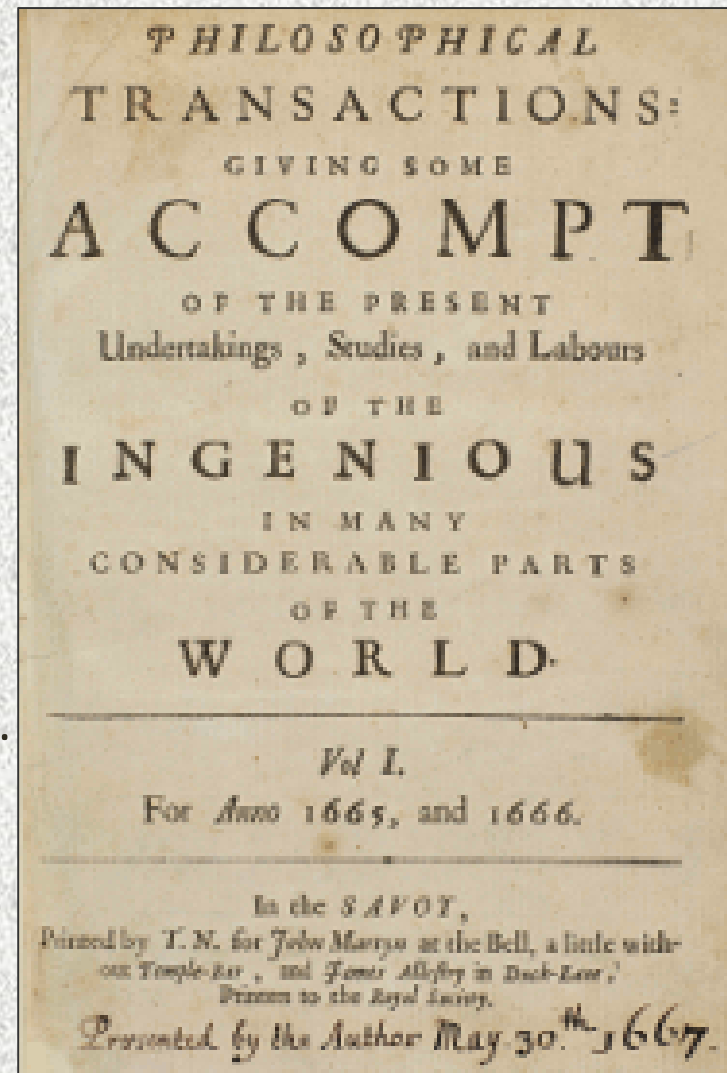


Scientific Publishing, 1665-1970

- *Philosophical Transactions*, 1665
 - Mission: “to recognise, promote, and support excellence in science and to encourage the development and use of science for the benefit of humanity.”
 - Utilitarian: knowledge as public good.
 - Non-profit.
 - Editorial review → peer-review.
- 18th-19thc. - Learned societies spread.
 - Follow *Phil. Trans.* publishing model.



Worked great for 300 years!



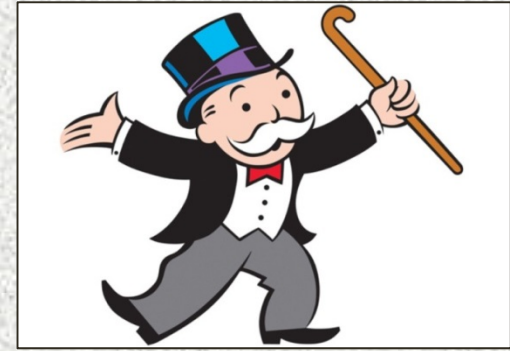
Innovations in Scientific Communication

< 1665	Personal correspondence, monographs
1665	<i>Philosophical Transactions</i>
1735	Single-blind peer review
18 th -19 th c.	Growth of scholarly societies
~1944-1960	Large investments in higher education
1955	Double-Blind peer review
1969	Journal Impact Factor
1970	Commercial Publishing
1995	Electronic journals

Post-WWII Changes

- ✓ Large influx of money into higher education system.
- ✓ Increased demand from libraries, readers.
- ✓ Increased demand for publishing venues by authors.
- ✓ Print journals expensive to produce and distribute.
- ✓ Scholarly societies unable to provide adequate supply.
- ✓ Impact factor 'objective' tool for valuation.
- ✓ Commercial publishers enter lucrative market.
- ✓ Online publishing disrupts system.

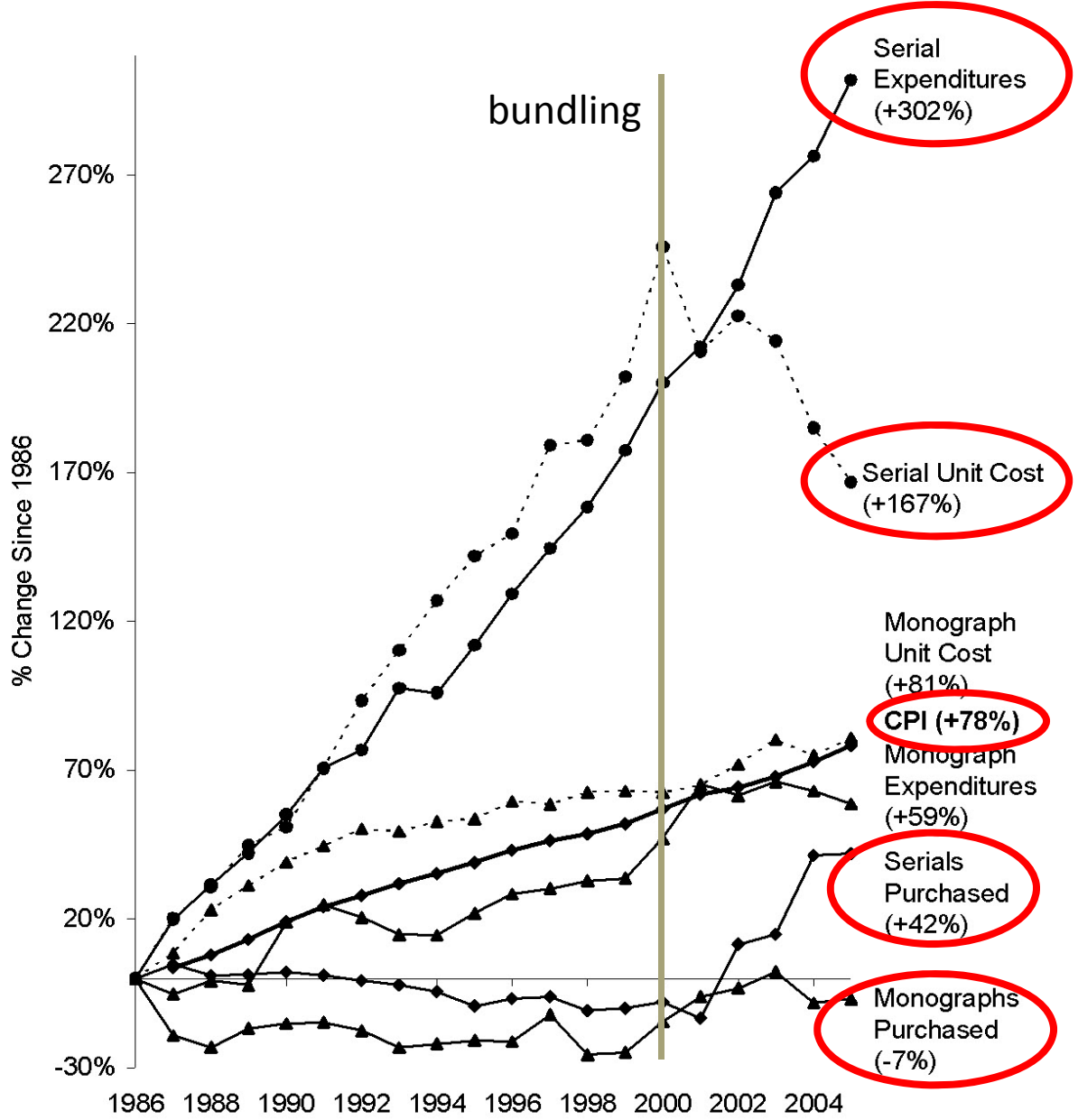
Monopoly / Oligopoly



- Non-substitutability of titles
- Captive, inflexible markets
- Industry consolidation
- Unregulated market
- Copyright extension, fair dealing
- Prestige barrier to market entry

Market Failure

Monograph and Serial Costs in ARL Libraries, 1986-2005*



Source: ARL Statistics 2004-05, Association of Research Libraries, Washington, D.C.
 *Includes electronic resources from 1999-2000 onward.

Source: <http://www.arl.org/bm~doc/arlstat05.pdf>



ASSOCIATION OF RESEARCH LIBRARIES®
empowering the research library community

2011 Electronic Serials

\$783,000,000

UWO: \$7,900,000

Source: Kyrillidou, M., Morris, S., & Robbuck, G. (Eds.). (2012).
ARL Statistics 2010-2011. Washington DC: ARL



**Digital Textbooks:
Issues in Creation, Access & Use**
Lisa di Valentino, LIS PhD Student



Journals versus textbooks

	Journals	Textbooks
Type of content	New research and original theory	Fundamentals of the discipline
Audience	Faculty, researchers, graduate students	Undergraduates
Primary incentive	Recognition, academic credit	Royalties

E-textbooks / digital textbooks

- Amazon e-textbooks, publishing companies
- may be open access or closer to traditional publishing
- limits on accessibility
 - format (e.g. Kindle or browser)
 - time
 - number of users
- limits on use
 - technical restrictions on certain uses such as printing, loaning, reselling
 - contractual restrictions against uses that may otherwise be permissible by copyright law (e.g. fair dealing)

Advantages of open access

- fewer limits than proprietary e-textbooks
- information can be quickly updated to reflect changes in the field
- authors can easily collaborate
- instructors can mix and match resources freely

Cost of textbooks

- rate of inflation for textbooks is higher than rate of general inflation
- students are “captive buyers”
- new editions of textbooks
 - fast-changing discipline
 - cut into used textbook market
- bundling of materials
- undergraduates can pay up to \$1,000 per year for traditionally-published

Government responses

- no monitoring or regulation of textbooks prices in Canada
- response by Ontario government:
 - textbook tax credit of \$65 per month for full-time students
 - OSAP textbook grant of \$150 (discontinued)
 - subsidizing profits of publishing companies
- response by B.C. government
 - <http://open.bccampus.ca/open-textbook-101/>
 - partnered with BCCampus to create open access textbooks for 40 first- and second-year university courses
 - increase accessibility and affordability for post-secondary students
 - three titles so far

Upshot?

- 500,000+ university students in Ontario
- grants and tax credits per year in the millions
- B.C. open textbook initiative: \$600k to \$1m per year
- less costly to update to new editions
- support use of technology in making information accessible, rather than proprietary



A Holistic Approach to Open Access, Campus Copyright, and Library Licensing

Samuel E. Trosow, Associate Professor, Faculties of Law
and Information & Media Studies

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Focus on the LOCAL Policy Venue

- There is a strong interrelationship between campus copyright policies, licensing practices and open access initiatives.
- While much attention had been focused on Parliament (Bills C-60, C-61, C-32 and ultimately C-11) the courts (review of Copyright Board decisions culminating in the 2012 pentalogy), local institutions are now the “hot venue.”
- More attention now turning to campus copyright/open access policies (local institutions as a venue for copyright/access policies) as well as the licensing practices that may limit access to library collections.
-briefly outline the holistic relationship between institutional copyright policies, licensing practices and open access.
- I argue that the three are closely inter-linked and that policies on one campus can often have significant spill over effects at others. In other words, there is increasingly an inter-related access policy environment.

Persistent Barriers to Progress

Three interrelated issues:

- Undue risk aversion, ultimately to the point of causing rights accretion
- Aggressive over-reaching on the part of vendors/publishers/licensors and their representatives and collectives
- Lack of copyright/licensing literacy

These three problems are interrelated and accelerate & exacerbate each other. Despite the addition of “**education**” to section 29 and the clear endorsement of users’ rights in the **pentalogy**, these problems continue to persist (although at increasingly differential levels across institutions)

Sensitive Institutional Policy Points (1)

At the institutional level (and multi-institution level when model licenses or consortium are involved), we can identify three recurring crucial policy points:

- 1) The negotiation of licenses which are often unnecessary, grant back rights already under fair dealing, which contain terms derogatory to users rights or which otherwise limit access to what is being licensed (with some examples as time permits);
- 2) The adoption of campus copyright guidelines or policies (a very hot issue now with the release of the new AUCC Guidelines and its alternatives;
- 3) General understanding of copyright and contract principles (which I would frame in terms of literacies.

Sensitive Institutional Policy Points (2)

These three policy areas (licensing, campus © policy, © literacy) are also interrelated:

For example:

- The broader the level of copyright and contracts literacy, the more awareness there will be of unreasonable limitations in licenses.
- The more pressure there is to adopt detrimental licenses, the harder it is to adopt and implement user-friendly copyright policies.
- The more restrictive and directive the campus copyright policy is, the harder it is to foster copyright literacy.
- & etc. They all touch on each other.

3 Strategies for Overcoming Barriers

1. Avoid unnecessary licenses and reject derogatory contract terms:
 - Terminate current Access Copyright license as soon as possible;
 - Full review of existing licenses with an eye towards eliminating provisions which derogate from users rights;
 - Recognize that rights accretion is often built into our contracts.
2. Adopt institutional copyright policies/guidelines which are flexible, educative and user-centered (meaning rejecting those that are rigid, directive and which make unnecessary concessions).
3. Enhance and promote copyright/licensing literacy.

These three points are inter-related.

Avoid unnecessary licenses, reject problematic provisions



- For every potential license, ask whether it is really necessary (and don't rely on the vendor's advice).
- Don't just start with a superficial fair dealing analysis, go through all of the steps (see CAUT or UT Guidelines).
- Remember that special exceptions (i.e sections 29.4, 30.2) are supplements to (not substitutes for) fair dealing.
- **Just say no** to onerous terms (examples such as HBR/EBSCO) -- Be prepared to walk away-- **saying no** to onerous terms requires a high degree of copyright *and* contract literacy – all well within the sphere of library practice.
- Public institutions should also reject publisher demands for non-disclosure of terms.

Harvard Business Review Notice of Use Restrictions, May 2009



“Gentlemen, you can't fight in here. This is the war room”

http://www.screened.com/dr-strangelove-or-how-i-learned-to-stop-worrying-and-love-the-bomb/16-186040/all-images/132-1080374/this_is_the_war_room/131-266670/

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Adoption of flexible institutional copyright policies/guidelines

- Compared to the situation in 2010-2011, there is a some convergence now developing
- *Although* the new AUCC Guidelines are seen as a setback from some (what are the problems with the set of 9 guidelines, are they being adopted?)
- University of Toronto [Guidelines](#) and Revised [CAUT Guidelines](#) as examples of a more flexible approach
- What is your institution using (alone or in combination?)
- For an analysis of campus policies across the AUCC institutions, see Lisa Di Valentino, “Review of Canadian University Fair Dealing Policies” (May 2013).
<http://ssrn.com/abstract=2263034>
- For initial critiques of the AUCC fair dealing guidelines, see various blog entries from Ariel Katz, Howard Knopf, Meera Nair, Sam Trosow, Lisa Di Valentino

Improve Copyright Literacy



- Lack of understanding is a barrier to access. “Copyright literacy” needs to be broadly promoted.
- You do **not** have to be a lawyer to read, understand and apply copyright law. (The CCH court **approved** librarians making copyright determinations).
- Look beyond the obvious ... **NO** for purposes of one section does not necessarily mean **NO** across the board (some notable examples?)
- Copyright literacy includes better faculty understanding on the part of faculty members about why they should retain their copyrights (see CAUT 2008 [advisory](#)).

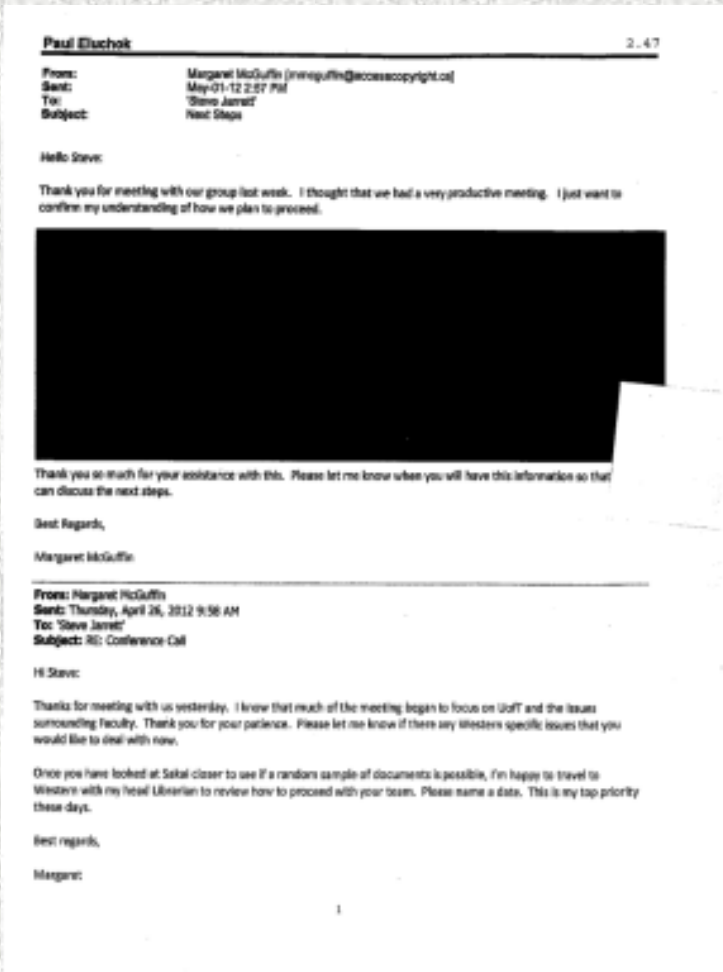
Improving literacy through collaboration

Campuses need to empower an independent, arms-length copyright officer, who must:

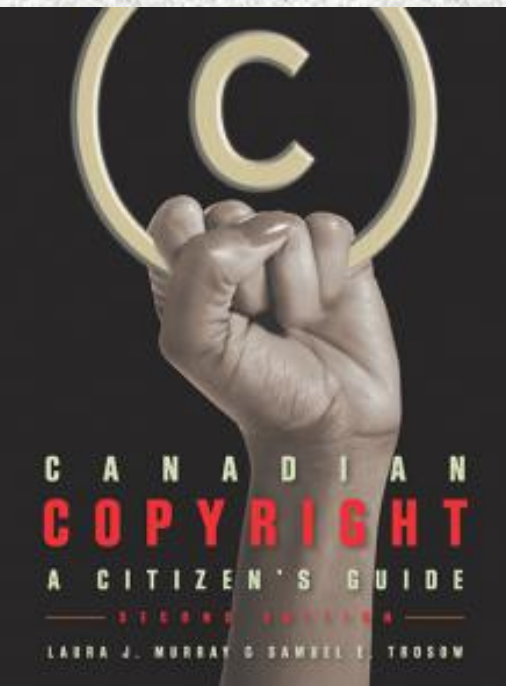
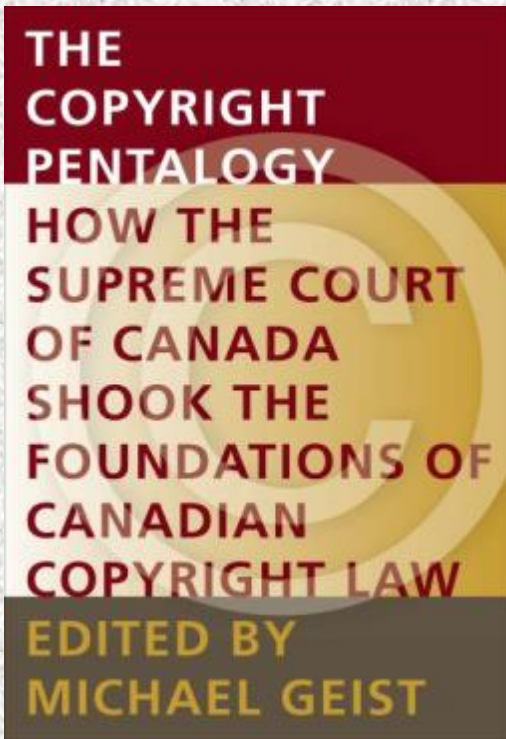


- be a member of academic staff with **full** academic freedom rights, with a clear **mandate** that is very broad and well defined;
- mandate includes ensuring **transparency** of all license agreements
- have the benefit of a **broad** advisory committee/group, and have a reasonable **resources** to fulfill crucial outreach and educational mission;
- encourage faculties/department to adopt their own provisions where needed.

Reject top-down managerial approaches to institutional copyright policies



- Many institutions have serious transparency & accountability challenges –this problem goes well beyond copyright policy.
- Be prepared to challenge secretive institutional practices, including non-disclosure provisions in licensing agreements.
- The role of faculty associations is important here as is the centrality of strong academic freedom practices.
- The role of library associations can also be crucial although of late there has been a tendency for the national library associations to opt for “neutral” positions.
- Copyright officer should ensure transparency.



CAUT Guidelines for the Use of Copyrighted Materials

[http://caut.ca/docs/default-source/copyright/revised-caut-guidelines-for-the-use-of-copyrighted-material-\(feb-2013\).pdf](http://caut.ca/docs/default-source/copyright/revised-caut-guidelines-for-the-use-of-copyrighted-material-(feb-2013).pdf)

U of T Fair Dealing Guidelines

<http://www.provost.utoronto.ca/Assets/Provost+Digital+Assets/26.pdf>

ARL Code of Best Practices in Fair Use for Academic and Research Libraries

<http://www.arl.org/storage/documents/publications/code-of-best-practices-fair-use.pdf>

Blogs:

<http://michaelgeist.ca>

<http://arielkatz.ca>

<http://excesscopyright.blogspot.ca/>

<http://samtrosow.wordpress.com>

<http://fairduty.wordpress.com/>

<http://poeticeconomics.blogspot.ca/>

<http://fairdealingineducation.wordpress.com/>

<http://www.doaj.org/> Directory of Open Access Journals

<http://scholarlyoa.com/> Includes list of predatory “open access” publishers

Research Reports:

Lisa Di Valentino, “Review of Canadian University Fair Dealing Policies” (May 2013). <http://ssrn.com/abstract=2263034>

Samuel Trosow, et al., “Objections to the Proposed Access Copyright Post-Secondary Tariff and its Progeny Licenses: A Working Paper” (Aug. 2012)

<http://ir.lib.uwo.ca/fimspub/24>

WATCH SCHOLARSHIP@WESTERN FOR MORE ENTRIES.

Questions?

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