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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.
- Supreme Court decisions (*CCH v LSUC* [2004], *Alberta (Education) v Access Copyright* [2012]).
- Copyright Board sets tariffs for royalty payments.
- Contracts.
“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.
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
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
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)
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
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)
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
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