

# CARL LRI Paper: Copyright Practices and Approaches at Canadian Universities – A Preliminary Update

## Abstract

Much has changed in the copyright sphere since a 2008 survey found that Canadian universities delegated responsibility for copyright in widely variant ways, and that frustration regarding a lack of guidance on how to interpret aspects of copyright legislation was common. A study is underway to update the 2008 survey.

## Introduction

The Canadian copyright landscape underwent radical reform over the decade spanning 2002 to 2012, culminating in a year of signal changes in copyright statutory and case law. Spring 2012 found many of Canada's publicly funded universities weighing their options for managing educational copying permissions in uncertain, high-stakes circumstances with some pressure to forge a decision quickly. A new model blanket licence negotiated by the Association of Universities and Colleges of Canada (AUCC) and Access Copyright became available in April 2012 with financial incentives to sign before the end of June at a time when the fate of Bill C-11 to amend the Copyright Act remained unsettled and decisions by the Supreme Court of Canada in five copyright cases, often referred to as the Copyright Pentalogy, were yet to be delivered (Tamburri 2012).

As things turned out, the process to pass Bill C-11 into law was completed by the end of June 2012 just before Parliament rose for its summer recess, and a mere two weeks later the much-anticipated Supreme Court Pentalogy rulings were released (*An Act to Amend the Copyright Act 2012*, Geist 2013). Copyright remained the focus of intense scrutiny over the latter half of 2012 as Canada's legal profession, educational institutions, copyright owners and others began to take stock of the import of amendments to the Act, including the expansion of fair dealing to include education, and the Supreme Court's determination in one of the Pentalogy cases, *Alberta (Education) v. Access Copyright*, that in K-12 public school contexts, teachers' copying of short excerpts for classroom use can qualify as fair dealing.

By the end of 2012, an emergent "fair dealing consensus" in the Canadian educational community (Geist 2012b) was evidenced in guidelines recommended by educational organizations (e.g., Noel and Snel 2012, Geist 2012a) and adopted by some institutions (e.g., University of Toronto 2012). These guidelines take into account new users' rights (infringement exceptions) in the amended Act and the Supreme Court's teachings on fair dealing in *Alberta (Education)* and *CCH Canadian v. Law Society of Upper Canada*. But creator organizations generally interpret fair dealing in decidedly different ways (e.g., Canadian Copyright Institute 2013). Access Copyright launched a lawsuit in April 2013 to contest the legality of an Ontario university's updated fair dealing guidelines (Access Copyright 2013), and Copibec filed a class action lawsuit for similar reasons against a Quebec university in November 2014 (Copibec 2014).

Moreover, a backlog of proposed tariffs for educational copying filed by Access Copyright and Copibec await Copyright Board certification (Copyright Board of Canada). Embedded in these tariff proposals is another issue about which copyright owners and the educational community largely disagree: whether a tariff, once certified, effectively becomes mandatory and retroactive (Katz 2015). To date, the Copyright Board has not found it necessary to address the “mandatory tariff” question, at least with regard to the postsecondary tariff proceedings (Copyright Board of Canada 2013). Thus, recent changes in Canadian copyright law have perhaps little alleviated the contentious, challenging nature of navigating Canadian educational copying waters.

### **Background and Research Questions**

A 2008 national online survey of academic libraries sought to portray the “complex and bumpy landscape” of copyright management and education at Canadian universities by investigating the organizational locus of responsibility for copyright management and methods for communicating copyright information (Horava 2010). While the study found that institutional responsibility for copyright most often resided with senior library administration, a wide variety of other positions were also reported to hold this responsibility. Responses to a question on copyright challenges elicited many comments reflecting frustration with educational and interpretive aspects of assisting university community members with copyright matters.

Although scholarly examinations of copyright-related matters in higher education appear to be on the increase in recent years, it appears that none have specifically investigated possible changes in how copyright education and management are addressed at Canadian universities since the watershed changes in Canadian copyright law that unfolded over 2012. However, some recent studies have touched on related issues.

Using Mintzberg’s organizational model as a conceptual lens, Albitz (2013) analyzed the organizational locus of copyright management at institutional members of the Consortia on Institutional Cooperation (CIC) in the United States. Results of interviews conducted with copyright officers at CIC universities led Albitz to conclude that the most important aspect of a credible university copyright program may be possession of a Juris Doctorate by the copyright officer in order to convey the position’s legitimacy, which can be complemented by the position’s organizational placement and assigned responsibilities. The study suggests all three elements are important to a successful copyright program.

To understand how academic libraries in the United States and Canada evaluate and manage copyright-related risks, Hansen, Cross and Edwards (2013) invited copyright personnel at Association of Research Libraries institutions to complete an online survey on copyright policies governing the provision of e-reserves. Among the study findings were a general paucity of collected e-reserve statistics at respondents’ institutions such as how many courses utilize e-reserves and the cost of obtaining required copyright permissions, a high level of adoption and recent updating of e-reserve policies, and wide variability in e-reserve copyright management practices and approaches to licensing e-reserve content.

In a study undertaken to extend Horava’s (2008) investigation of copyright information on Canadian academic library websites, Di Valentino (2013) conducted a content analysis

of the websites of AUCC university members outside of Quebec to locate and examine policy documents on fair dealing. All websites considered in the study were found to provide copyright guidance and 65% offered an updated fair dealing policy that most often appeared to be modeled on the AUCC fair dealing policy revised in 2012. Employing a critical theory lens, the researcher found a number of these fair dealing policies reflected inconsistencies, inaccuracies, or overly narrow interpretations of the scope of fair dealing and its legitimate application in postsecondary settings.

The present study seeks to update Horava's 2008 national survey by exploring the following research questions: What has changed in the areas of copyright education, permissions management and copyright policy development at Canadian universities over the past seven years? What are the most significant copyright challenges at Canadian universities?

## **Methods**

LimeSurvey will be used to distribute the study's online survey, which is offered in English and French. An invitation to participate in the study will be sent in the Spring 2015 to the university librarian or equivalent position at member institutions of four regional Canadian library consortia: Council of Atlantic University Libraries, Bureau de Coopération Interuniversitaire, Ontario Council of University Libraries, and the Council of Prairie and Pacific University Libraries.

The survey is comprised of questions that invite a mix of yes/no, multiple choice and written responses. Survey questions address four areas: responsibility for copyright, copyright education, copyright permissions, and copyright policy at each respondent's institution.

## **Preliminary Findings**

This conference presentation will share selected preliminary findings of the survey. Anticipated connections to the conference theme of "time" are centred on an exploration of how the recent dramatic shifts in the landscape of Canadian copyright have perhaps led to changes since 2008 in the approaches and practices employed by Canadian universities to manage copyright matters and assist the academic community in understanding and appropriately exercising various rights associated with copyright.

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