

Copyright Practices & Approaches at Canadian Post-Secondaries: A Follow-up Survey

2021 ABC Copyright Conference

May 5, 2021

Rumi Graham & Christina Winter



Background

Horava, T. (2010). Copyright communication in Canadian academic libraries: A national survey. *Canadian Journal of Information and Library Science*, 34 (1), 1-38. <https://doi.org/https://doi.org/10.1353/ils.0.0002>

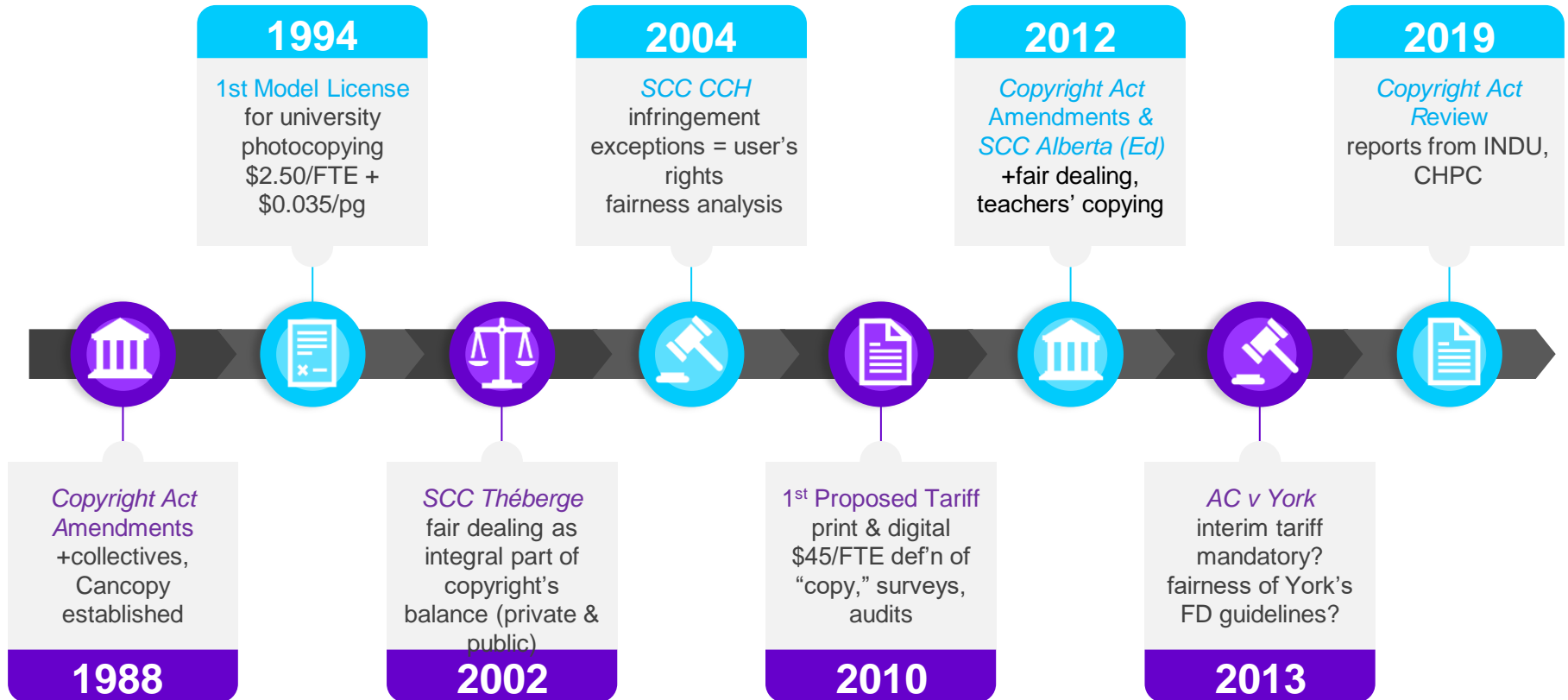
Graham, R., & Winter, C. (2017). What Happened After the 2012 Shift in Canadian Copyright Law? An Updated Survey on How Copyright is Managed across Canadian Universities. *Evidence Based Library and Information Practice*, 12(3), 132–158. <https://doi.org/10.18438/B8G953>

Goals

Investigate how Canadian post-secondary institutions currently address copyright education, management and policy.

What has changed since 2015?

Canadian Educational Copying, 1988 - 2019: Some Key Events



1994 model blanket photocopying license for universities
(negotiated by AUCC and Cancopy)

AND WHEREAS CANCOPY desires to grant to the Institution a reprography licence to permit and authorize the Institution to reproduce copyright works without substituting for the purchase of books and other published materials;

AND WHEREAS the Institution desires to obtain the right to reproduce copyright works for any purpose within the mandate of the Institution which reproductions would be outside the scope of fair dealing under the *Copyright Act* R.S.C. 1985 c.C-42, as amended;

AND WHEREAS the parties **do not agree on the scope of the said fair dealing;**

Théberge v. Galerie d'Art du Petit Champlain inc. ([2002 SCC 34](#))

[32] **Excessive control** by holders of copyrights and other forms of intellectual property **may unduly limit** the ability of the public domain to incorporate and embellish creative innovation in the **long-term interests of society as a whole**, or create practical obstacles to proper utilization. This is reflected in the **exceptions to copyright infringement** enumerated in ss. 29 to 32.2, which seek to **protect the public domain** in **traditional ways such as fair dealing** for the purpose of criticism or review . . .

CCH Canadian Ltd. v. Law Society of Upper Canada ([2004 SCC 13](#))

[48] . . . Procedurally, a defendant is required to prove that his or her dealing with a work has been fair; however, the **fair dealing** exception is perhaps **more properly understood as an integral part of the Copyright Act** than simply a defence. . . . **The fair dealing exception**, like other exceptions in the Copyright Act , **is a user's right**. In order to maintain the proper balance between the rights of a copyright owner and users' interests, **it must not be interpreted restrictively**.

Alberta Education v. Access Copyright ([2012 SCC 37](#))

[23] . . . Teachers have no ulterior motive when providing copies to students. Nor can teachers be characterized as having the completely separate purpose of “instruction”; they are there to facilitate the students’ research and private study. . . . the teacher’s purpose in providing copies is to enable the students to have the material they need for the purpose of studying. The teacher/copier therefore shares a symbiotic purpose with the student/user who is engaging in research or private study. Instruction and research/private study are, in the school context, tautological.

From [2019 INDU Report](#) on the Statutory Review of the Copyright Act

EXCEPTIONS

EDUCATIONAL FAIR DEALING

Committee Observations and Recommendations

The Committee cannot endorse the proposal to limit educational fair dealing to cases where access to a work is not “commercially available,” as defined under the Act. While licensing should be encouraged, this proposal risks reducing flexibility in the educational market by favouring blanket over transactional licensing.

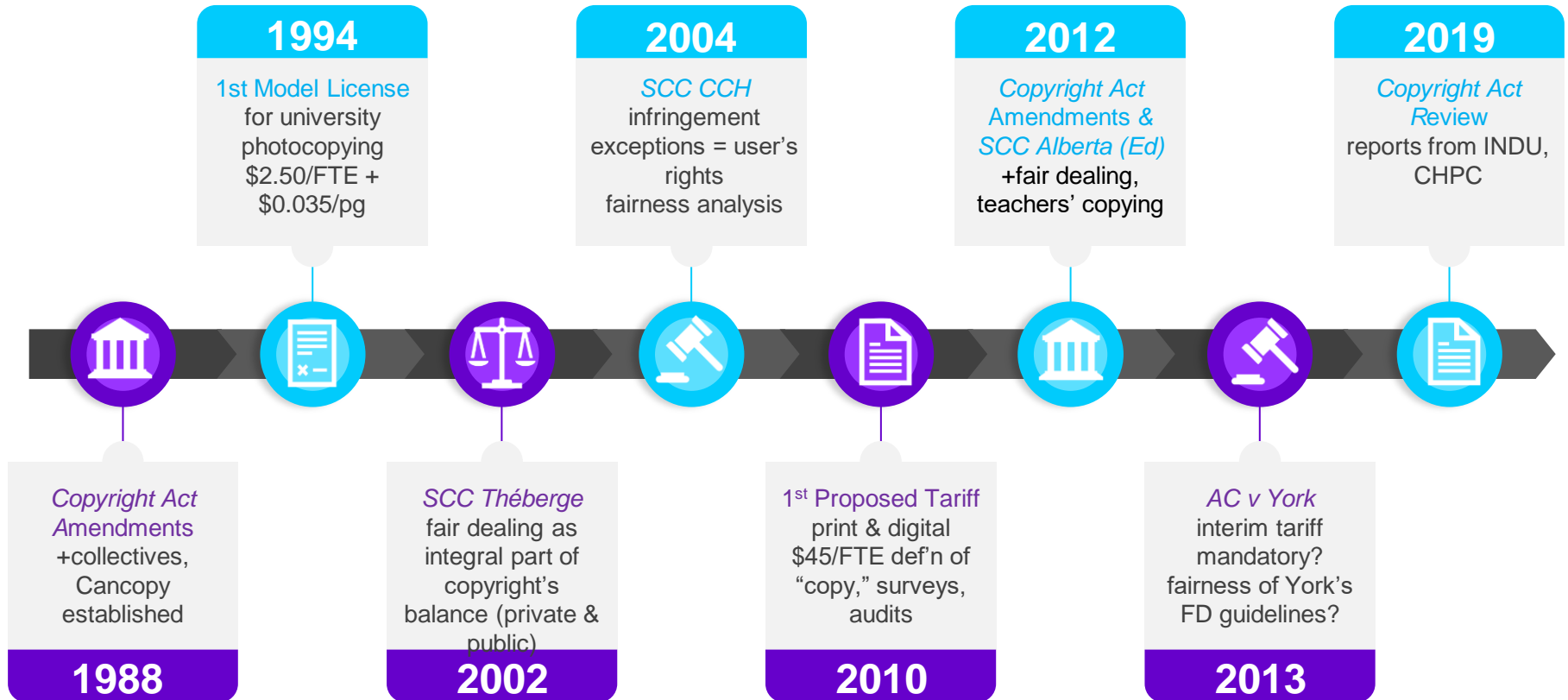
From [2019 CHPC Report](#), Shifting Paradigms

SHIFTING PARADIGMS

Recommendation 18

That Government of Canada amend the Act to clarify that fair dealing should not apply to educational institutions when the work is commercially available.

Canadian Educational Copying, 1988 - 2019: Some Key Events



2020 Survey: Distribution

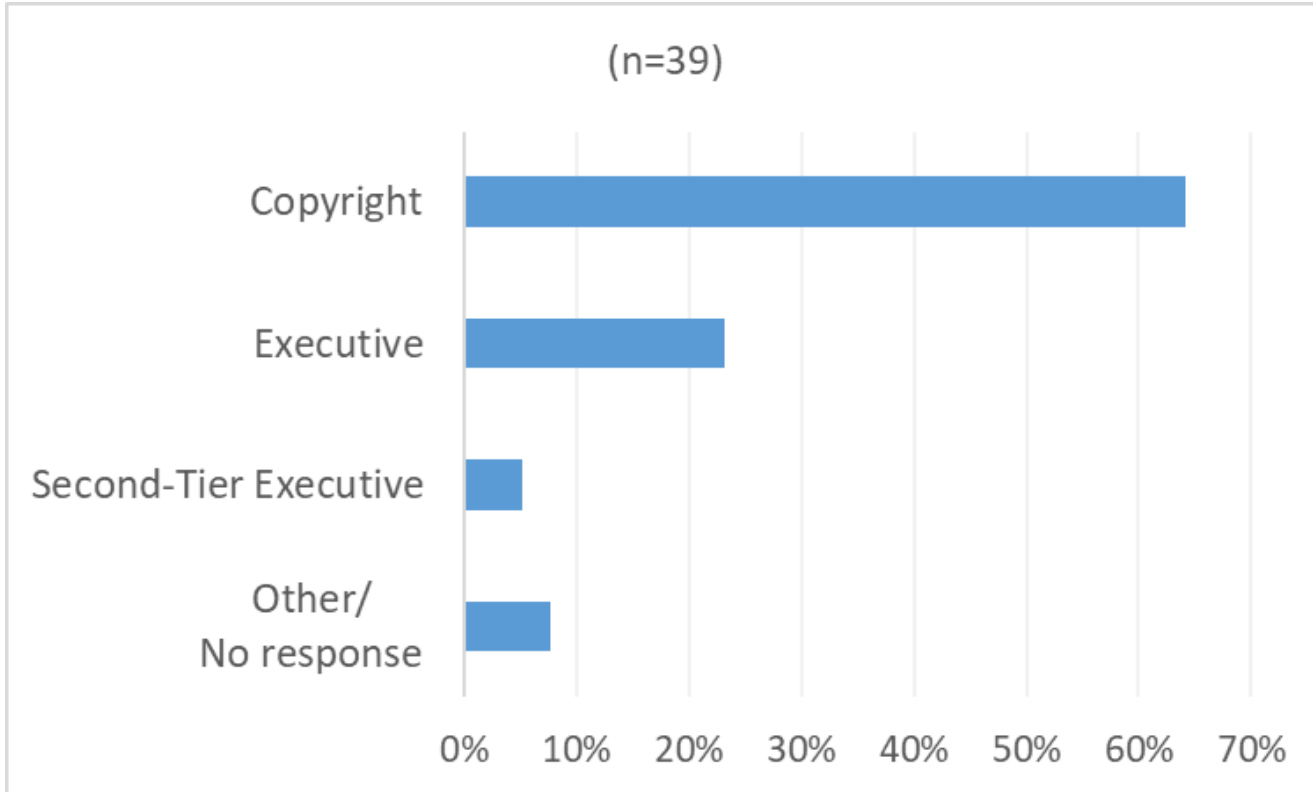
Employees who are responsible for matter related to copyright including education, permissions, and policy.

- CAUL (Council of Atlantic University Libraries)
- BCI (Bureau de Coopération Interuniversitaire)
- OCUL (Ontario Council of University Libraries)
- CLO (College Libraries Ontario)
- COPPUL (Council of Prairie and Pacific University Libraries)

Survey respondents by consortium

	Members/ Affiliates	2020 Respondents	Response Rate
CAUL	18	7	39%
BCI	18	2	11%
OCUL	21	5	24%
COPPUL (incl. affiliates)	37	17	46%
CLO (added in 2020)	23	7	30%
<i>Totals/Average</i>	<i>117</i>	<i>38</i>	<i>30%</i>

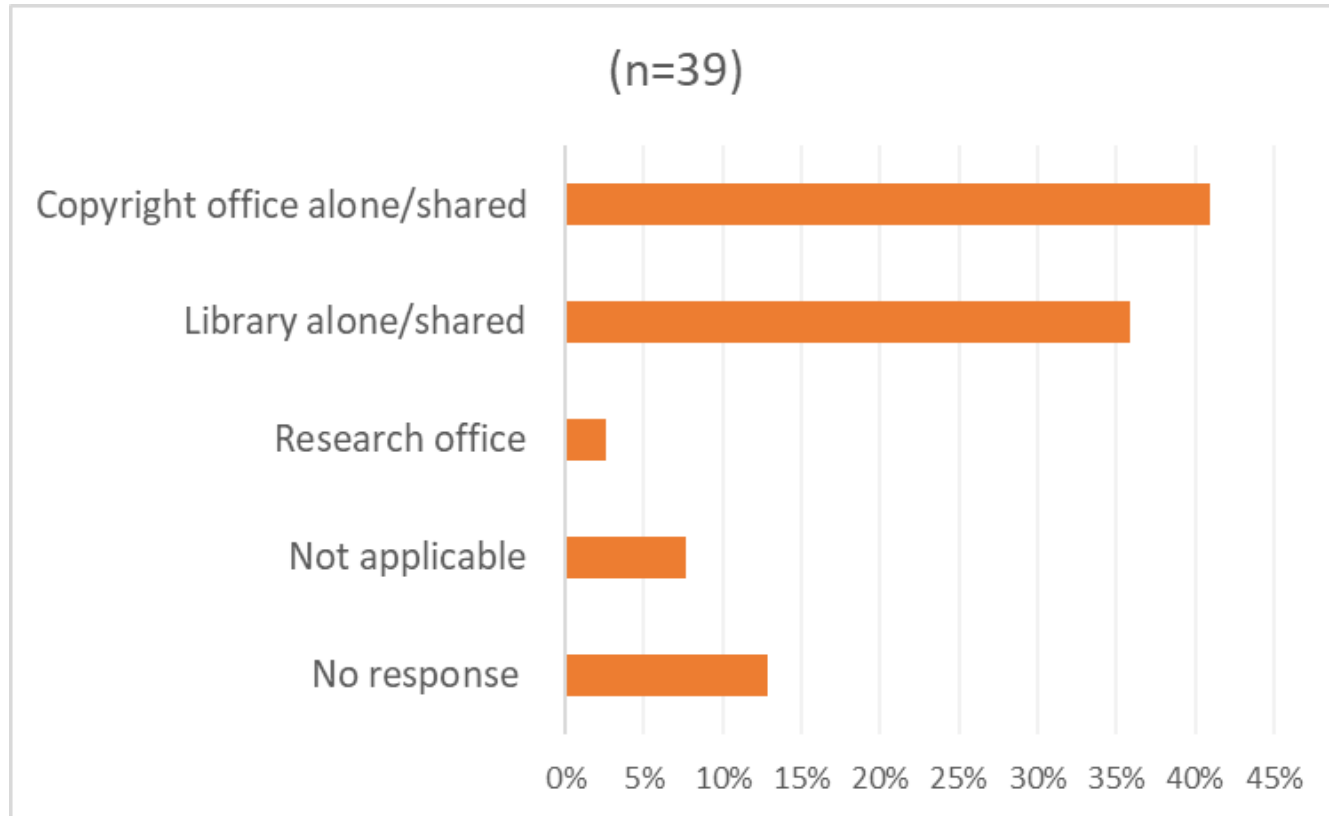
Survey respondents by position title



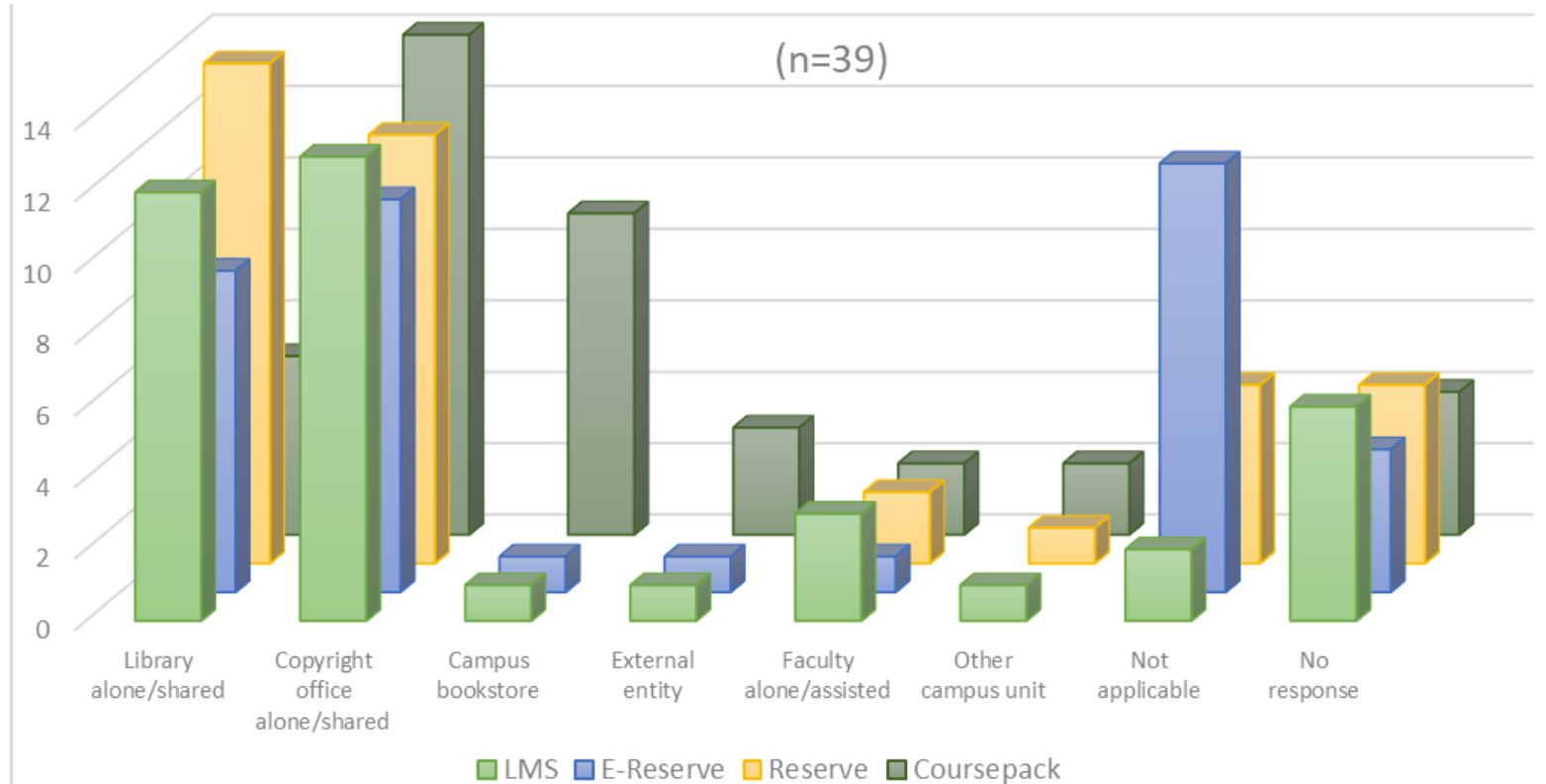
2020 Survey: Topics covered

- Responsibility for copyright
- Copyright education
- Copyright policy
- Copyright permissions & licensing
- Copyright compliance

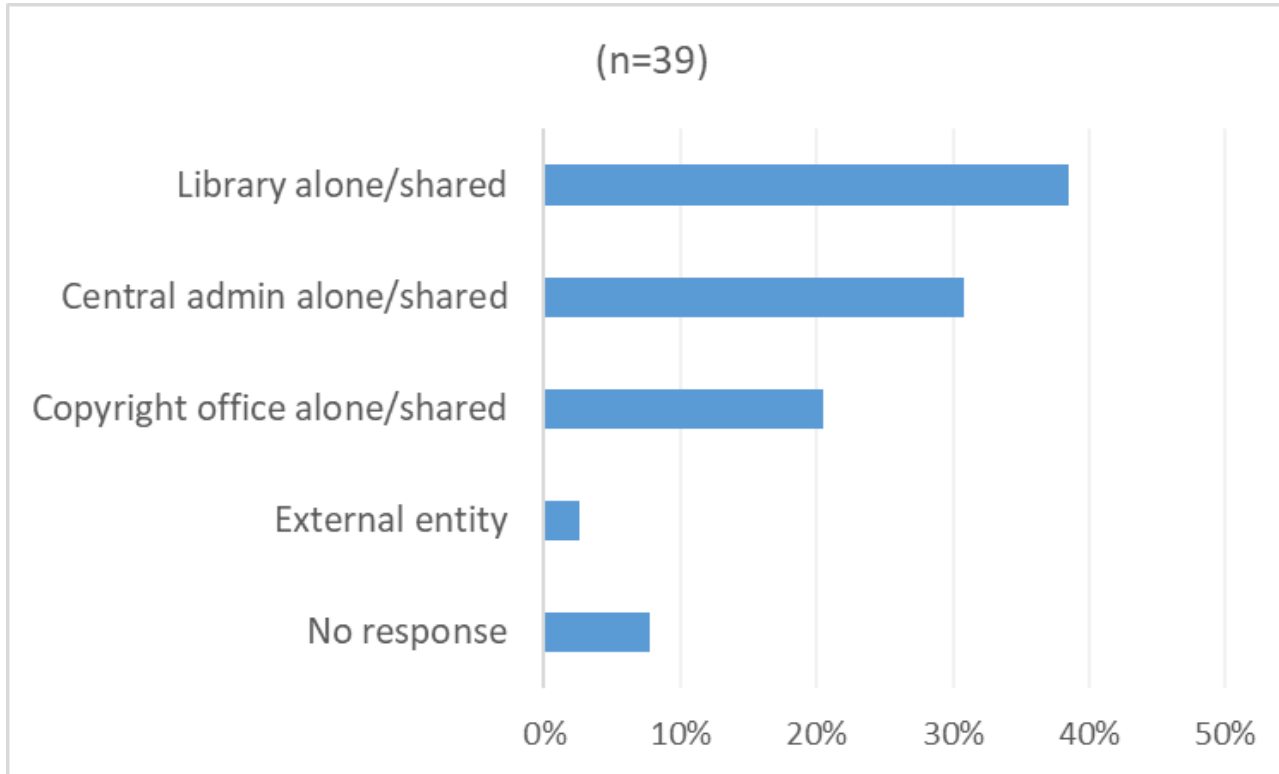
Responsibility for copyright education for authors



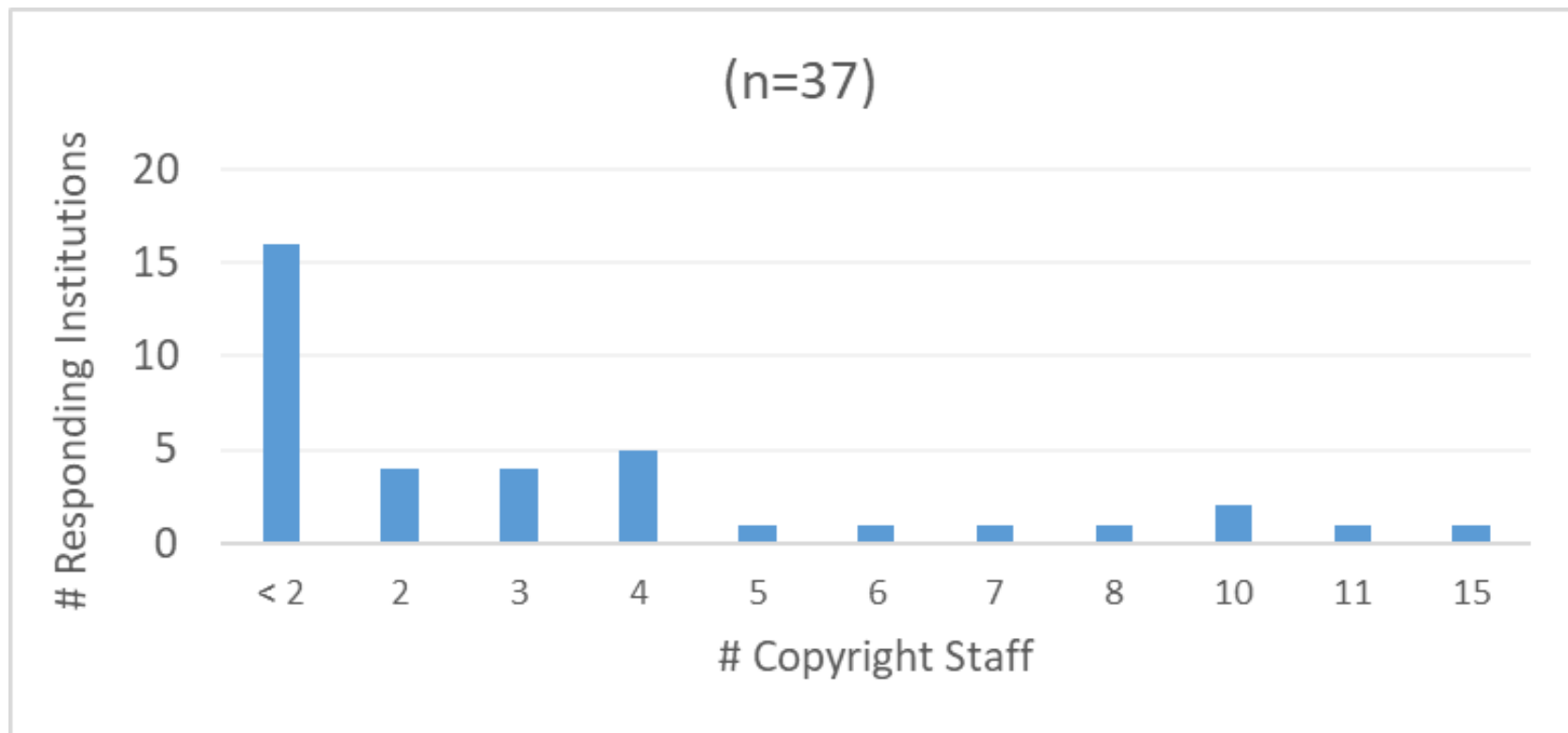
Responsibility for permissions



Responsibility for blanket licensing decisions



Staff responsible for copyright



Copyright staff

“2 Copyright Specialists mainly for clearing materials for curriculum development, special faculty/institutional requests, faculty education. One Jr. Copyright Specialist to clear campus/ printed course packs. 1 supervisor of editing/ copyright fill in gaps, liaison for growth and institutional initiatives, liaison with legal and library”

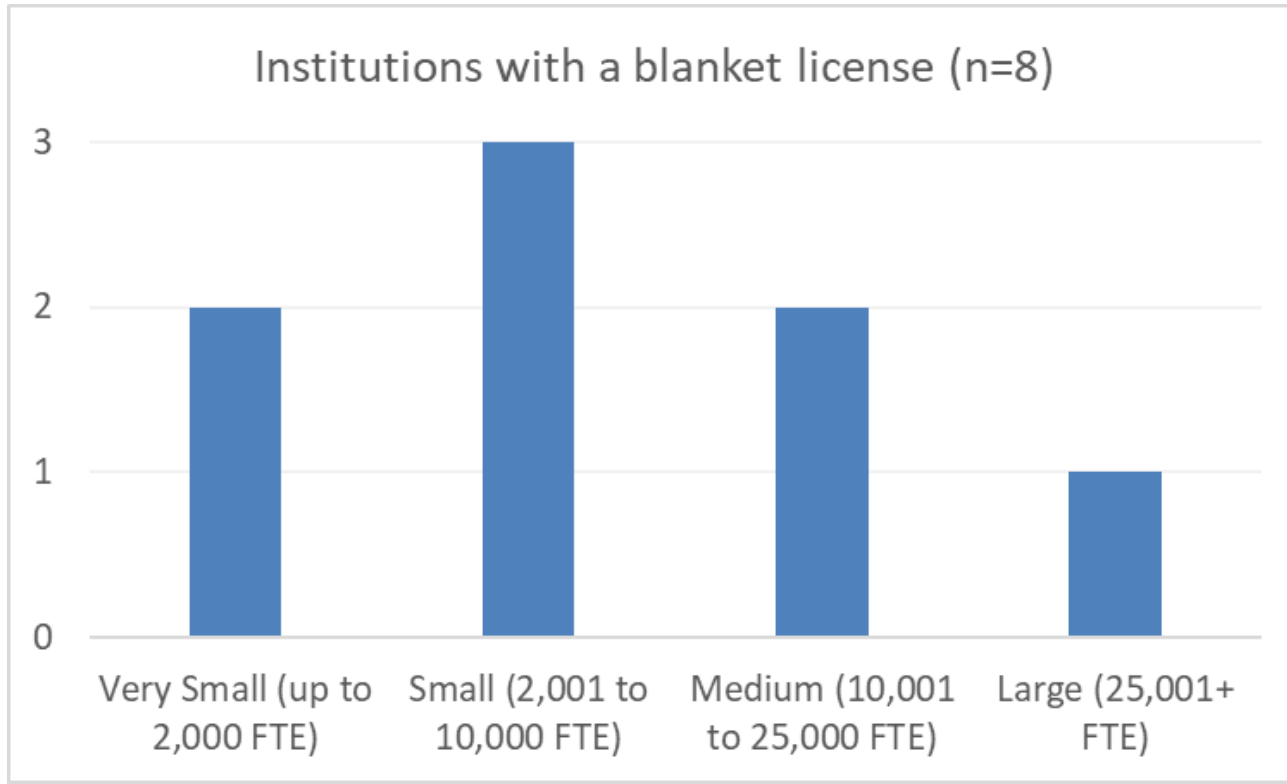
“One. Staff reductions and need have reduced the Copyright Assistants from two in 2011 to zero now.”

Copyright education: Changes

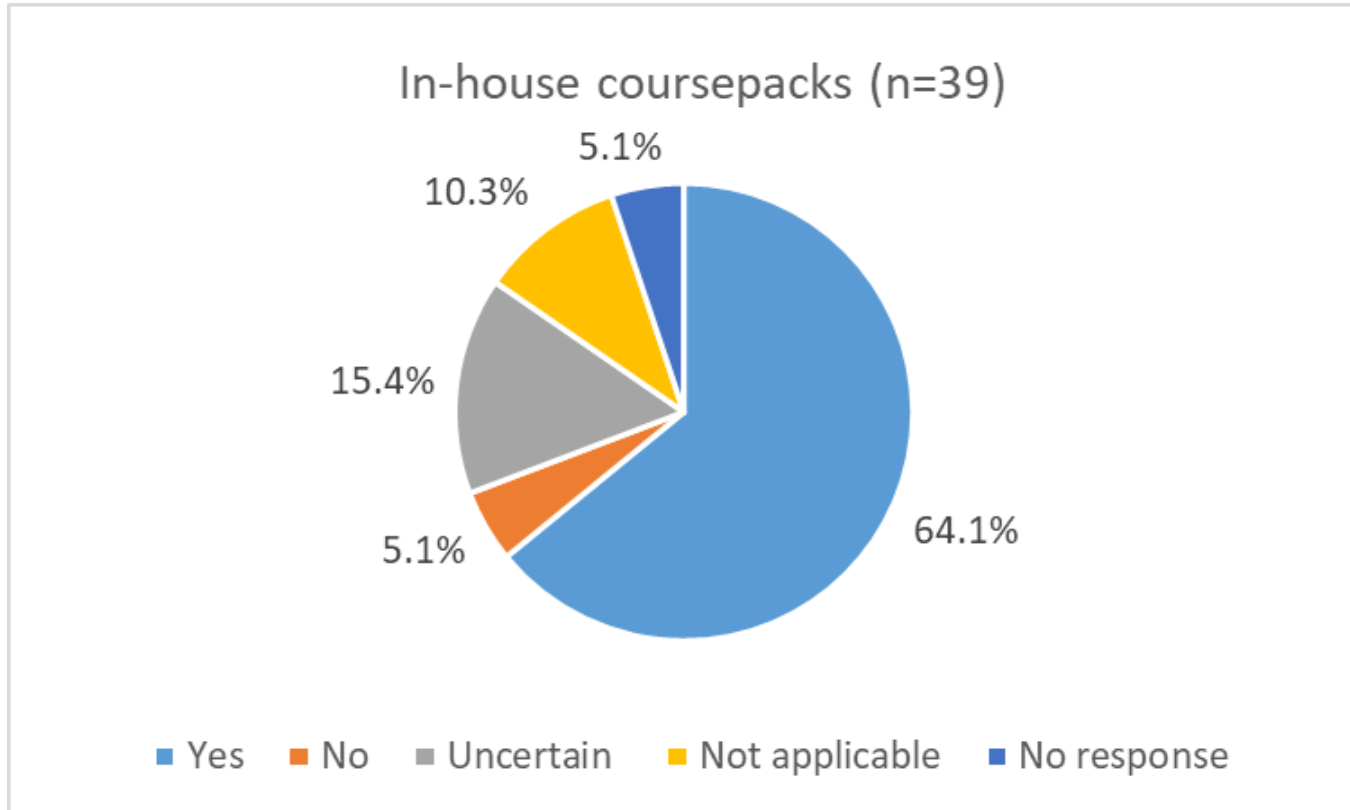
“Faculty are more interested in the alternatives such as OER, library licensed e-resources and e-reserves. Also, some faculty are interested in copyright education and resources for their students.”

“No more optional, drop-in sessions; more focus on targeted department/faculty presentations and development of online information guides. ”

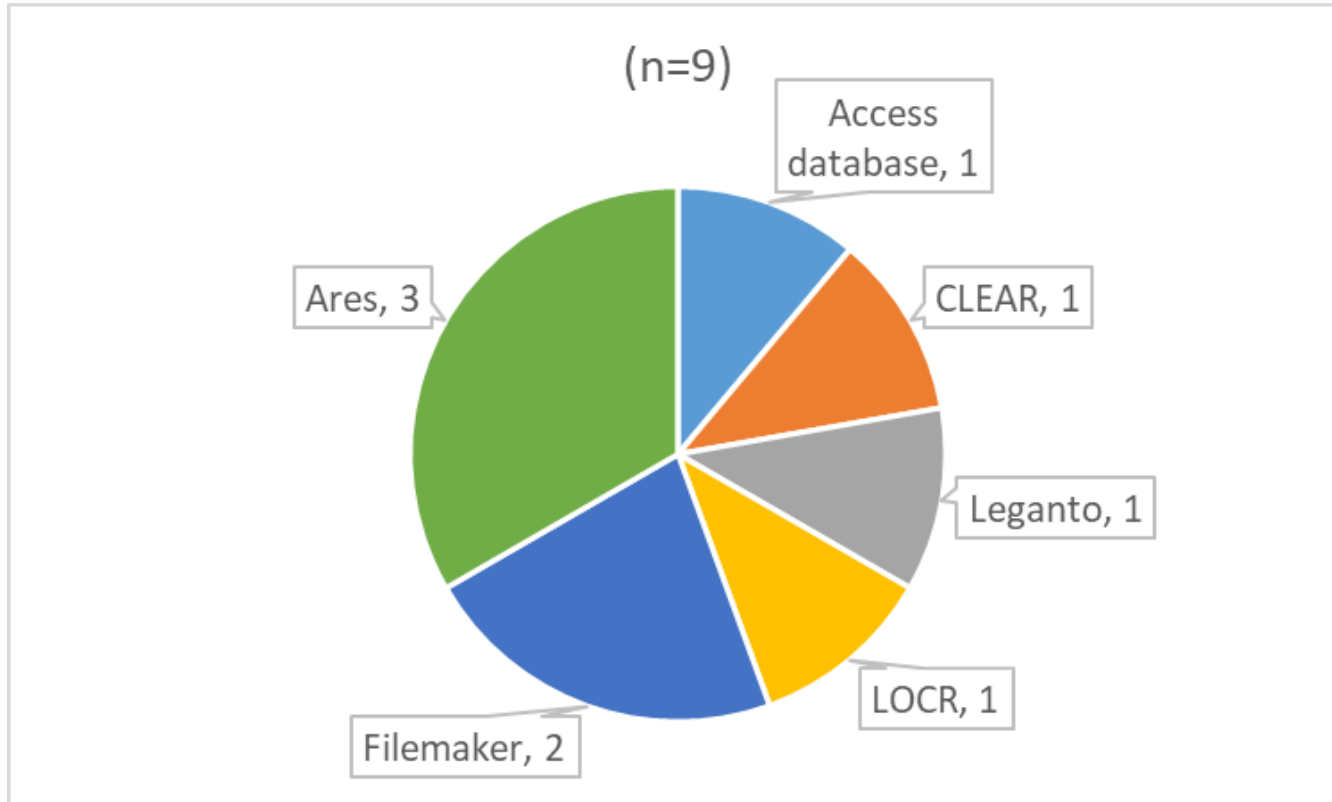
Blanket licensing environment



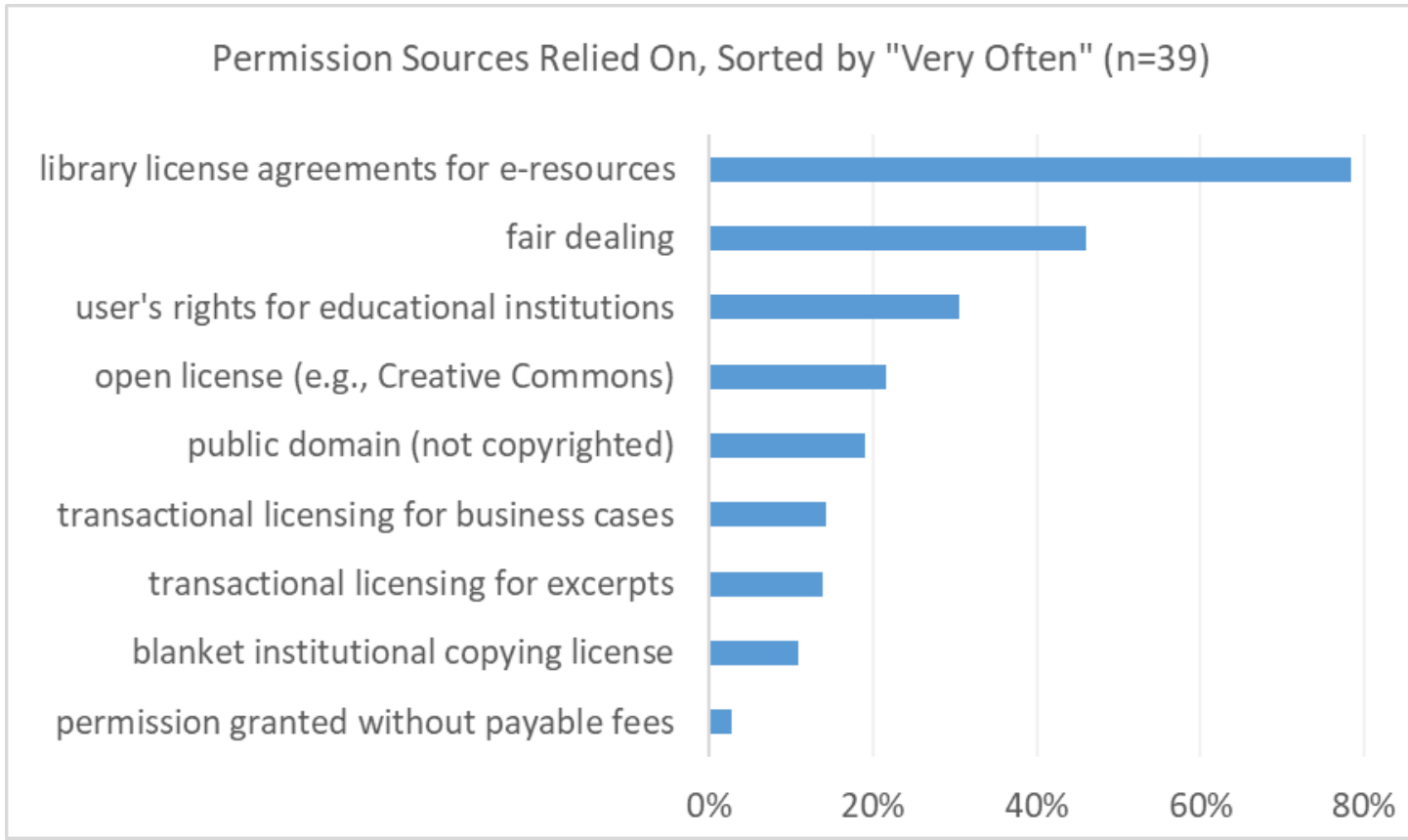
Applicability of library licenses assessed?



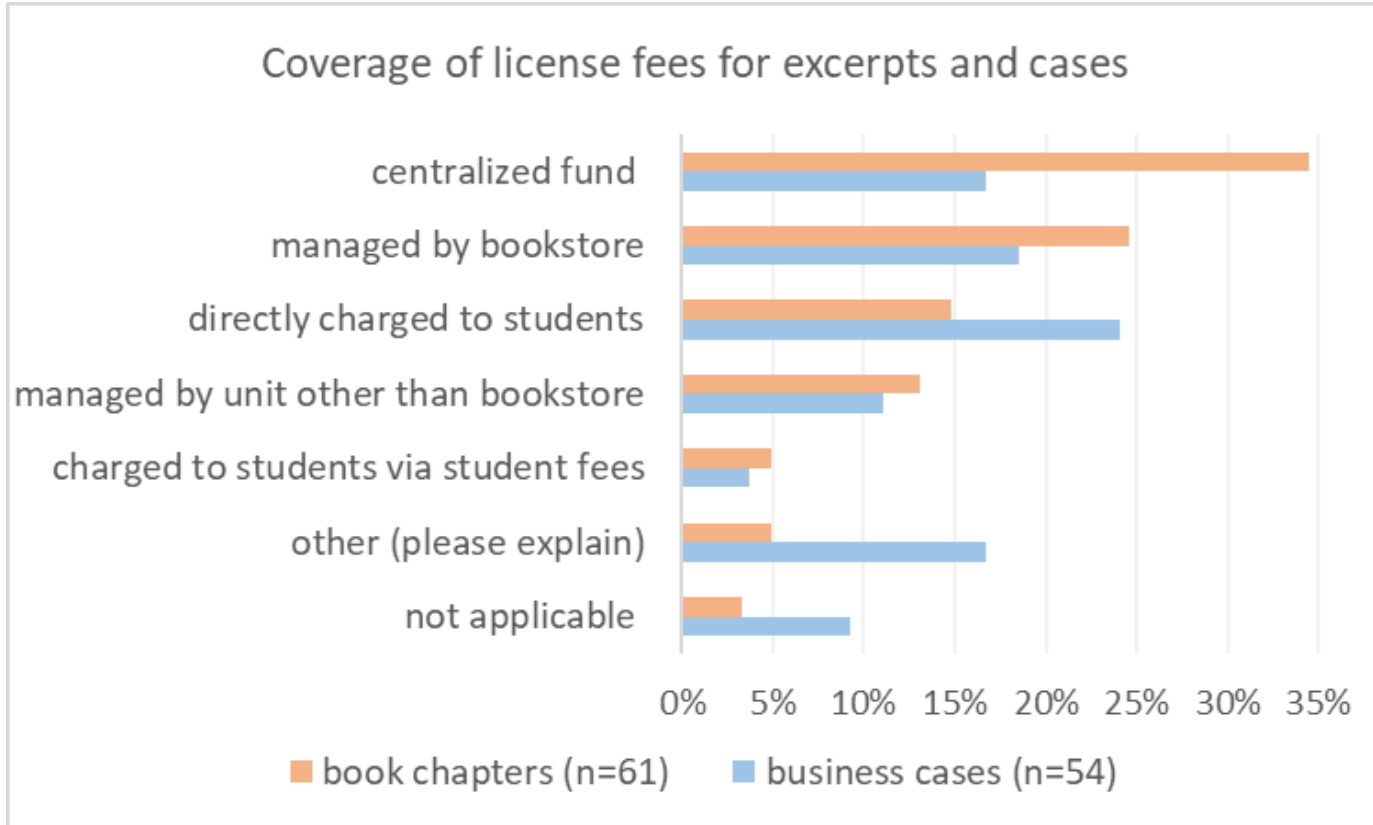
Platforms for managing permissions



Permission Sources for Course Materials



Pay-per-use licensing costs



Other comments

“We do plan to introduce a warning notice in our LMS (near future) and a formal education requirement for all instructors (long term)”

“These are uncertain times re. educational fair dealing and whether or not approved tariffs are mandatory for educational institutions.”

Acknowledgements

This study was funded by a 2019 CARL Practicing Librarian - Research in Librarianship Grant.

Rumi Graham (grahry@uleth.ca) and Christina Winter (christina.winter@uregina.ca)