



newfoundland and labrador
library association

Open Letter: NLLA's Position on the AUCC's proposed model license agreement with Access Copyright

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In 2011, over 30 Canadian universities and colleges, including Memorial University of Newfoundland, opted out of licensing agreements with Access Copyright, The Canadian Copyright Licensing Agency, due to Access Copyright's proposed post-secondary tariff. The tariff represents a significant (1,300%) increase in per-student fees; the introduction of what many consider to be intrusive and impractical monitoring requirements, and the assigning of rights to Access Copyright that do not exist under Canadian copyright legislation.

The Association of Universities and Colleges Canada (AUCC) had been representing its member institutions in the Copyright Board post-secondary tariff hearing, arguing against the tariff, however, in April, the AUCC abruptly withdrew from the hearing, a decision that has been described as "astonishing." The AUCC and Access Copyright agreed upon terms of a model license agreement, which AUCC is recommending that its members enter into.

The NLLA has reviewed the model license and it is our position that no post-secondary institution should sign it, for some of the following reasons:

- **Questionable value for the money:** The agreement only covers Access Copyright's "Repertoire Works". The Library has already obtained licenses to a significant volume of materials directly from publishers or aggregators not in Access Copyright's repertoire, and a considerable amount of scholarly material is freely available through open access. Much of the usages of any materials at educational institutions are permitted under Fair Dealing or the Educational Exemption under soon to pass Bill C-11. We question whether Access Copyright's repertoire (particularly their digital repertoire) justifies a \$26 per student fee.
- **Definition of copying:** The proposed license gives Access Copyright additional rights that simply do not exist under Canada's copyright legislation. Their definitions of a "copy" include:
 - "projecting an image using a computer or other device" – This is already permitted by the Copyright Act: "29.4 (1) It is not an infringement of copyright for an educational institution or a person acting under its authority... (b) to make a copy of a work to be used to project an image of that copy using an overhead projector or similar device for the purposes of education or training on the premises of an educational institution."

- “displaying a Digital Copy on a computer or other device” - How else would students or faculty access a digital copy? This is the equivalent of saying reading a book constitutes “copying”.
- “posting a link or hyperlink to a Digital Copy” – This definition has not been upheld by the Supreme Court of Canada. To concede such a definition by signing the agreement as it is currently worded will have long-term consequences for the future of access to online information in Canada.
- **Restrictions that impact research, teaching and learning:** The proposed license states that “Copies of Repertoire Works shall not be stored or indexed with the intention of creating a library of Published Works, except as permitted by this agreement as part of a Course Collection.” This has serious implications for scholarly research. For example, faculty and students could not keep copies of journal articles (in AC’s repertoire) for the purpose of research and private study (a right they do have under Fair Dealing). Since Access Copyright defines linking as copying, researchers could not keep even keep links to Access Copyright materials.
- **Intrusive and impractical surveillance requirements:** The proposed license mandates the monitoring of the particular works utilized on campus and the volume of use. Because Access Copyright defines “copying” to include transmission by email, linking, and displaying content on a computer, it’s difficult to envision how this monitoring would not be intrusive to faculty, librarians, researchers and students, and jeopardize the principles of privacy and academic freedom essential to scholarly research.

Many other organizations have spoken out against the proposed agreement including the Canadian Federation of Students, Queen’s University Librarians and Archivists (QULA), Carleton University Graduate Students’ Association, Memorial University of Newfoundland’s Faculty Association (MUNFA), the Atlantic Provinces Library Association (APLA), and the Canadian Association of University Teachers (CAUT). Condemning the agreement, CAUT is advising universities and colleges that “It’s time to stand up for the right to fair and reasonable access to copyrighted works for educational purposes.”

The NLLA strongly advises universities and colleges, particularly those in Newfoundland and in Atlantic Canada, not to capitulate to Access Copyright’s unfair and unreasonable demands. Please do not sign the AUCC’s proposed license agreement.

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