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Course Overview

Canadian copyright law has changed significantly in recent years, universities are changing their policies, and collective licence agreements are being negotiated or disputed across the country. Patron expectations and content-use behaviours are also evolving.

How does this impact interlibrary loan activities? Are the current standard policies, the technologies we use—even the request forms we use to fulfill interlibrary loan requests—still functional and appropriate in this new environment?

It is important for staff in academic libraries to familiarize themselves with the new copyright paradigm so that they can support scholarship and advocate from an informed perspective.

This is a five session, reading-intensive, professional development course on Canadian copyright law for ILL librarians and practitioners working in an academic setting. Each session builds on topics discussed in previous sessions.

Learning objectives

- To examine the intent of copyright law, how this impacts academic institutions in general, and academic libraries in particular.
- To become familiar with the actual text of the *Copyright Act*, particularly those sections that most impact interlibrary loan services.
- To recognize which sections of the law are relevant to research activities versus those sections of the law relevant to teaching activities.
- To understand the rulings of several important Supreme Court decisions on copyright that are particularly relevant to ILL librarians in the academic setting.
- To learn about the applicability of fair dealing, with an emphasis on the relevance of this legal concept to information professionals (not just end users).
- To begin to consider how copyright collectives, vendor licences, university policy, and the law intersect in these changing times, and how this intersection impacts ILL practices.

Materials, resources and/or technology needed.

- *Copyright Act* (R.S.C., 1985, c. C-42).
- Murray, Laura J., and Samuel E. Trosow. *Canadian Copyright: A Citizen's Guide*, 2nd ed. Toronto: Between the Lines, 2013.
- Other readings as listed in each lesson plan. Apart from Murray and Trosow, all readings are openly available online at the time of this writing.
- Internet access.
- “Professor’s ILL Request” case study packet ([Appendix I](#)). This should be provided to participants prior to the first class. It is recommended that participants bring in their own case study (based on their real-world occupational experiences) to use instead of this packet if they can. This expands the types of scenarios that can be discussed, and helps make the lessons more personally meaningful and relevant to each participant.
- Instructor slides and/or handout notes of main lesson points are recommended.

Lesson 1. Introduction to Canadian copyright law for academic library staff

Intended audience

This is a professional development course aimed primarily at staff who provide interlibrary loan services in higher education institutions.

Library school students may also benefit, as well as university administrators involved in copyright decisions related to library services.

Length of lesson: 90 minutes

Brief overview

This lesson covers the legal protections granted by the *Copyright Act* to copyright owners, including both copyright and moral right protections of works.

A brief look at the 19th-century birth of copyright law in Canada, compared with its development in several other countries, is also provided. The aim is to provide cultural context and encourage consideration of contemporary issues in light of this history.

Learning outcomes

Participants will have gained familiarity with those portions of Part 1 and Part 3 of the *Act* that address the exclusive rights of copyright holders. They should understand and be able to articulate the scope of these rights.

Participants will come away with a foundational understanding of the historical aims of the *Copyright Act* and copyright law in the Canadian context.

Prerequisites needed to be met by participant before attending this lesson

“Required readings” listed in the Resources section. A quick perusal of the “scan” resources is also advised.

All participants should scan the materials provided in the “Professor’s Request” packet. Library staff who provide interlibrary loan services should come prepared with basic notes about a relevant case from their own work experiences, if feasible.

Resources

Required readings:

The following sections of the *Copyright Act* (R.S.C., 1985, c. C-42):

PART I : Section 3 – Copyright in works; Section 5 – Works in which copyright may subsist; Section 6 – Term of copyright; Section 13 – Ownership of copyright

PART III : Section 27 – Infringement of copyright

The following chapters of Murray, Laura J., and Samuel E. Trosow. *Canadian Copyright: A Citizen's Guide*, 2nd ed. Toronto: Between the Lines, 2013:

Chapter 2: Copyright’s Histories, 36–52

Chapter 3: Copyright’s Scope, 55–75

Chapter 4: Owners’ Rights, 76–93

Tawfik. Myra J. “History in the Balance: Copyright Law and Access to Knowledge.” In *From “Radical Extremism” to Balanced Copyright*, edited by Michael Geist, 69–89 .Toronto: Irwin Law, 2010. (<http://www.irwinlaw.com/sites/default/files/attached/CCDA%2003%20Tawfik.pdf>)

Scan:

Copyright Act. Section 2 “Definitions”, Section 14 “Moral Rights”, Section 28 “Moral Rights Infringement”.

Industry Canada. “About Copyright.” <https://www.ic.gc.ca/eic/site/icgc.nsf/eng/07415.html>

Introduction

- Instructor introduction/bio.
- Canadian context — Vendor licence agreements, primarily developed by U.S. content providers, frequently use U.S. copyright language (e.g. referring to CONTU guidelines, TEACH act, duration, fair use, etc.). Conversations about copyright are heavily influenced by U.S. discourse. (Instructors may find this evident in certain assumptions that participants make.) For this reason, the course reviews the origins of Canadian copyright law.

Note: It’s usually helpful to remind today’s audiences how young Canada is (July 1, 1867), and to attune them to the unique circumstances that helped shape Canada’s intellectual property laws, including our conversations today.

- Authors’ & Owners’ Rights — The *Copyright Act* uses extremely convoluted language. It tries to itemize each and every possible use for each and every type of protected work. It is common for those seeking clarity to turn to U.S. law, and assume that the two acts are one and the same.

Note: The instructor should keep the class apprised of fundamental differences. A comparison slide or handout could be useful. (That said, the Murray and Trosow text does a reasonable job of making these distinctions clear.)

Guided practice (Drawing on participant experience)

- Introduce a genuine ILL scenario in which copyright was a concern, optionally providing handouts or a summary slide.
- Address the following questions about the scenario, and then participants are asked to do the same with their own cases. (This could be a few volunteers or everyone, depending on class size, time constraints, etc.):
 1. Which exclusive rights were you concerned about violating in your particular ILL scenario?
 2. Who holds those rights?
 3. Did you know why the patron wanted this material? If so, how did you know this?
 4. In your particular case, what steps did you take (if any) to meet the requirements of copyright law?

Direct Instruction

Present a slide-supported review of the assigned readings, covering:

- Origins of Canadian copyright legislation, and relevance to today (Tawfik, 2010; Murray & Trosow, ch. 2)
- Types of work protected by copyright law (*Copyright Act* 3 & 5; Murray & Trosow, ch. 3)
- Exclusive rights granted to copyright holders (*Copyright Act* 13; Murray & Trosow, ch. 4)
- Crown copyright (Industry Canada – about Crown copyright, types of licences)
- Copyright duration (*Copyright Act* 6; Murray & Trosow, ch. 3 → Tables 5 & 6)
- What constitutes copyright infringement (*Copyright Act* 27)

Throughout this talk, refer back to cases discussed during the guided practice and/or incorporate question periods, as appropriate.

Sharing/Reflection (Class Discussion)

Depending on number of people, either discuss as one group, or break up into small groups and then re-convene to share discussions.

1. Based on these readings, do you think that ILL services by their very nature contravene the purpose of copyright law, or not?
2. Consider in particular section 27 (2.3) and (2.4), regarding the provision of Internet services that enable acts of copyright infringement. Is this section relevant to online ILL services such as Scholars Portal/RACER? Consider the factors described in 2.4, and evaluate RACER's policy and technical service provisions. Does this seem strictly defensible under the law? Explain your reasoning.

Closing (Take-Home Question)

Reconsider your ILL case or the Professor's Request. Do you have any new questions now about how that request could or should have been handled? What more do you think you need to know about copyright law in order to answer those questions?

Assessment Methods and Criteria

This course is primarily designed as a professional development workshop that puts assessment in the hands of participants. At the end of each session, participants complete and submit a brief "reflective survey" evaluating what they feel they've learned. This allows participants to gauge where they are relative to where they hope to be, and also gives the instructor a sense of what may need to be adapted in future lessons. (See next page.)

Lesson 1 survey

1. On a scale of 1 to 5, please circle the number that best represented your knowledge of the topics covered in this lesson *prior to participating in this class*:

No Knowledge					Advanced Knowledge
	1	2	3	4	5

If copyright law is relevant to your occupational duties, please apply the following scale when answering question 1 above. Prior to participating in this lesson:
 1 → *I had no way to justify my professional decisions in relation to today's topics based on my knowledge of the law.*
 5 → *I could easily justify my professional decisions in relation to today's topics based on my knowledge of the law.*

2. After participating in this lesson, I have gained a better understanding of:

Learning outcomes	Strongly Disagree	Somewhat Disagree	Neither Agree Nor Disagree	Somewhat Agree	Strongly Agree
The types of work protected by copyright law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The exclusive rights granted to copyright holders	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copyright duration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
What constitutes copyright infringement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Origins of Canadian copyright legislation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. After this lesson, I would still like to know more about the following:

Lesson 2. Exceptions to exclusive rights for educational institutions and LAM

Intended audience

This is a professional development course aimed primarily at staff who provide interlibrary loan services in academic institutions.

Library school participants may also benefit and are welcome, as are higher education administrators involved in copyright decisions related to library services.

Length of lesson 90 minutes

Brief overview

This lesson covers certain legal exceptions that place limits on the exclusive rights granted to copyright owners by the *Copyright Act*. It concentrates on special exceptions for libraries, archives, and museums, and other exceptions specific to teaching activities and educational institutions.

The section 29 fair dealing exception is introduced, but will not receive comprehensive coverage until the next lesson (Lesson 3).

Learning outcomes

Participants will have gained familiarity with those portions of the *Copyright Act* delineating exceptions to the exclusive rights of copyright holders, in particular those directly relevant to academic libraries.

They will come away with a fuller understanding of the scope and fundamental differences between the various exceptions, how these differ from U.S. law, and begin to recognize when they and their patrons will be best served by each of the options.

Prerequisites needed to be met by participant before attending this lesson

Participants should review the “required readings” listed in the Resources. A quick perusal of the “scan” resources is also advised.

Attendance at previous lesson.

Resources

Required readings:

The following sections of the *Copyright Act* (R.S.C., 1985, c. C-42):

PART III : Section 29 – Exceptions ; Section 30.1 – 30.5 (exceptions for Educational Institutions/Library, Archives, Museums—see the related regulation SOR/99-325) ; Section 32 – Persons with Perceptual Disabilities

Exceptions for Educational Institutions, Libraries, Archives and Museums Regulations (SOR/99-325).
<http://www.laws.justice.gc.ca/eng/regulations/SOR-99-325/FullText.html>

From Murray, Laura J., and Samuel E. Trosow. *Canadian Copyright: A Citizen's Guide*, 2nd ed. Toronto: Between the Lines, 2013 (note these are not the full chapters):

Chapter 5: Users’ Rights, 106–111
Chapter 16: Libraries, Archives, and Museums, 231–242
Chapter 15: Education, 213–225

Scan:

Copyright Act. 30.63 – Security; 30.7 – Incidental Inclusion; 30.71 – Temporary Reproductions for Technological Processes; 30.8 – Ephemeral Recordings; 31 – Retransmission; 31.1 – Network Services

Introduction

Copyright exceptions are fundamental to our ability to provide library services to the academic communities we serve. However, there are some oddities in our legal framework.

Opening questions (not rhetorical—begin with class discussion):

1. Where in the *Act* is the exception that permits us to rent or lend out copyright-protected works in our institutions?
2. “Chapter, article, 10% of the whole?” Just as in the Professor’s Request case discussed last week, this metric has come to define the parameters of allowable ILL copying service. You’ve reviewed the exceptions in the *Act*. Any thoughts on where these allowable amounts come from?

Direct Instruction

Instructor presents a slide-supported review of the assigned readings, covering:

- What the *Act* says about fair dealing (i.e. not much). Compare to *U.S. Copyright Act* s. 107.
- 29.21 Non-commercial User-Generated Content (new in 2012—relevance to ILL users?)
- 32 Persons with Perceptual Disabilities (on behalf of)
- 29.3 Acts Undertaken without Motive of Gain
- 29.4 Educational Institutions (learning- /teaching-oriented exceptions)
- 30.1 Libraries, Archives and Museums (preservation/access)
- 30.2 Libraries, Archives and Museums (ILL provision, on behalf of patrons’ s. 29 rights—but *only for “research or private study”*, digital copy restrictions, no fiction/music/drama)
- 30.3 Machines Installed in Educational Institutions, LAM (SOR/99-325→requires licence w/ copyright collective)
- 30.4 Libraries, Archives and Museums in Educational Institutions
- Pre-1999 amendments, no special library rights. Compare section 30 exceptions pre-1999/1999/2012 (All versions available online.)
- U.S. CONTU – no such thing in Canada.

Resources for lecture apart from readings.

CONTU guidelines. http://www.copyright.com/Services/copyrightoncampus/content/ill_contu.html

U.S. Copyright Act, s. 107. <http://www.copyright.gov/title17/92chap1.html#107>

Sharing/Reflection (Class Discussion)

- 1) Consider the Professor’s Request. What might have been the ILL librarian’s reasoning for ordering the whole volume rather than a digital copy of the 20 pages?
- 2) Consider your own cases. Based on the statutory exceptions in the *Act*, what were your obligations and rights as an ILL librarian?

Depending on number of people, either discuss as one group, or break up into small groups and then re-convene to share discussions.

Closing (Take-Home Question)

How do you think the section 30 provisions, added to the *Act* in 1999 and amended in 2012, help to protect the rights of copyright holders (covered in Lesson 1)?

Examine your library's interlibrary loan policies. How are the section 30 exceptions reflected in these policies?

Assessment methods and criteria

This is a professional development course that puts assessment in the hands of participants. At the end of each session, participants will complete a brief survey evaluating what they feel they've learned.

Lesson 2 survey

1. On a scale of 1 to 5, please circle the number that best represented your knowledge of the topics covered in this lesson *prior to participating in this class*:

No Knowledge

Advanced Knowledge

1

2

3

4

5

If copyright law is relevant to your occupational duties, please apply the following scale when answering question 1 above. Prior to participating in this lesson:

1 → *I had no way to justify my professional decisions in relation to today's topics based on my knowledge of the law.*

5 → *I could easily justify my professional decisions in relation to today's topics based on my knowledge of the law.*

2. After participating in this lesson, I have gained a better understanding of:

Learning outcomes	Strongly Disagree	Somewhat Disagree	Neither Agree Nor Disagree	Somewhat Agree	Strongly Agree
Fair dealing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scope of exceptions for educational institutions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scope of exceptions for LAM	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scope of exceptions for academic libraries (beyond above)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

After this lesson, I would still like to know more about the following:

Lesson 3. Copyright, fair dealing, and the Supreme Court of Canada

Intended audience

This is a professional development course aimed primarily at staff who provide interlibrary loan services in academic institutions.

Library school students may also benefit, as well as higher education administrators involved in copyright decisions related to library services.

Length of lesson 90 minutes

Brief overview

Arguments and outcomes of three Supreme Court cases that have significantly impacted common understanding of copyright law are examined – in particular, how the fair dealing exception of the *Copyright Act* can be interpreted given that the statute itself provides no such guidance. The cases are:

1. *CCH Canadian Ltd. v. Law Society of Upper Canada*
2. *Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright)*
3. *Society of Composers, Authors and Music Publishers of Canada (SOCAN) v. Bell Canada*

The lesson concentrates primarily on the six-factor fair dealing test first articulated in *CCH*, then looks at how these factors were interpreted in the subsequent two cases.

Learning outcomes

Participants will:

- be able to knowledgably discuss the arguments raised in three significant Supreme Court rulings on copyright and fair dealing;
- recognize the distinction and relevance of user activities undertaken under section 29 (fair dealing) vs. activities conducted under section 30.2 (specific to libraries, archives, and museums);
- understand under what circumstances fair dealing may apply in their work as ILL librarians;
- be able to reasonably evaluate the fair dealing factors in their own work situations.

Prerequisites needed to be met by participant before attending this lesson

“Required readings” listed in the Resources. A quick perusal of the “scan” resources is also advised.

Attendance at lessons 1 & 2.

Resources

Required readings:

CCH Canadian Ltd. v. Law Society of Upper Canada, [2004] 1 S.C.R. 339, 2004 SCC 13. (Available online at: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2125/index.do>)

Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright), [2012] 2 S.C.R 345, 2012 SCC 37. (Available online at: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9997/index.do>)

Society of Composers, Authors and Music Publishers of Canada (SOCAN) v. Bell Canada, 2012 SCC 36, [2012] 2 S.C.R. 326. (Available online at: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9996/index.do>)

From Murray, Laura J., and Samuel E. Trosow. *Canadian Copyright: A Citizen's Guide*, 2nd ed. Toronto: Between the Lines, 2013 (note these are not the full chapters):

Chapter 5: Users' Rights, 94–111

Chapter 15: Education, 207–213

Chapter 16: Libraries, Archives, and Museums, 226–230

Scan:

Copyright Act. Section 3 “Fair Dealing”.

Introduction

- The text of the *Copyright Act* alone does little to help us understand our legal rights and responsibilities, particularly in the case of the fair dealing exception.
- The 2004 Supreme Court Case *CCH Canadian Ltd. v. Law Society of Upper Canada* changed all that, and subsequent court decisions have shed further light on the scope of fair dealing. Understanding these cases is important to academic library staff, including ILL service provision.

Direct Instruction

Instructor presents a slide-supported review of the assigned readings, covering:

- *CCH Canadian Ltd. v. Law Society of Upper Canada*
 - Establishment of the fair dealing test. Two steps.
 - Step 1: Allowable dealing (use)?
 - Step 2: Six fairness factors, to be analysed “reasonably” as “points of fact”
 - s. 29 fair dealing exception is “a user’s right” -- always available
 - para. 49 – library only needs to turn to s. 30.2 if it can’t reasonably use s. 29
 - Great Library’s explicit fair dealing policy helped tip court in its favour. Steps taken to respect both copyright and users’ needs (e.g., legally tenable, well-documented fair dealing policy defined scope of document service provision)
- *Alberta (Education)*
 - Further clarification on “amount of dealing” factor
 - Further support for “large and liberal” interpretation of allowable dealings (+2012 amendment that added “education” to allowable dealings)
 - Teaching activities in support of students is tantamount to student use
 - Outright purchase of whole book not a “reasonable alternative” to copying excerpt
- *SOCAN v. Bell*
 - Expansive def’n of “research” (a customer’s “research” on a product before purchase is allowable dealing)
 - Further clarification on “amount of dealing” factor (same as *Alberta* – and contrary to CONTU)

- Again asserts fair dealing as user’s right.

Likely to be a long lecture. Incorporate question periods, as appropriate.

Sharing/Reflection (Class Discussion)

Participants should look at their own ILL cases.

- Test it against the *CCH* fair dealing factors. Would your case reasonably qualify as fair dealing?
- Further justify or argue against your decision using the other cases when relevant.
- If not, could you use s. 30.2 instead? Or a different exception?

Depending on number of people, either discuss as one group, or break up into small groups and then re-convene to share discussions.

Assessment methods and criteria

This course is primarily designed as a professional development workshop that puts assessment in the hands of participants. At the end of each session, participants can complete a brief survey evaluating what they feel they’ve learned.

Lesson 3 survey

1. On a scale of 1 to 5, please circle the number that best represented your knowledge of the topics covered in this lesson *prior to participating in this class*:

No Knowledge					Advanced Knowledge
1	2	3	4	5	

If copyright law is relevant to your occupational duties, please apply the following scale when answering question 1 above. Prior to participating in this lesson:
 1 -> *I had no way to justify my professional decisions in relation to today’s topics based on my knowledge of the law.*
 5 -> *I could easily justify my professional decisions in relation to today’s topics based on my knowledge of the law.*

2. After participating in this lesson, I have gained a better understanding of:

Learning outcomes	Strongly Disagree	Somewhat Disagree	Neither Agree Nor Disagree	Somewhat Agree	Strongly Agree
The six fairness factors in <i>CCH</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The distinction between fair dealing and other copyright exceptions available to academic	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

libraries

The applicability of fair dealing to interlibrary loan

Key judicial arguments that support libraries' ability to use fair dealing on behalf of patrons in higher education

Key judicial arguments that help determine how to apply the six factors in ILL decision making

3. After this lesson, I would still like to learn more about the following:

Lesson 4. Copyright collectives in Canada.

Intended audience

This is a professional development course aimed primarily at staff who provide interlibrary loan services in higher education institutions.

Library school students may also benefit, as well as university administrators involved in copyright decisions related to library services.

Length of lesson: 1.5 hours

Brief overview

Copyright law was amended in 1988 to explicitly define a role for copyright collectives, with new clarifications added in 1999. These contributed to the development of a powerful group of copyright organizations, particularly Access Copyright and SOCAN.

Since 2004, however, judicial clarifications about fair dealing and further statutory amendments have changed expectations of libraries and higher education. This has led to a gradual shift in the balance of power, but one that is still playing out.

Providing good ILL services in an evolving copyright environment requires a full understanding of this context and its ramifications.

Learning outcomes

Participants will be able to explain to colleagues and patrons:

- the role and powers of the Copyright Board
- the benefits and purpose of collective copyright organizations
- drawbacks and limitations of Canada's collectives
- what types of use require arrangements with collectives by law
- distinction between fair dealing uses and authorized uses based on Copyright Access licence
- potential redundancies between fair dealing, the model licence, and other vendor agreements

Prerequisites needed to be met by participant before attending this lesson

“Required readings” listed in the Resources section. A quick perusal of the “scan” resources is also advised.

Attendance at lessons 1–3.

Resources

Required readings

The following sections of the *Copyright Act* (R.S.C., 1985, c. C-42):

PART VII. 70 – Collective Administration in Relation to Rights under Sections 3, 15, 18 and 21; 70.1 – Collective Societies; 70.13 – Tariffs; 70.2 – Fixing of Royalties in Individual Cases; 70.5 – Examination of Agreements

Access Copyright. *AUUC Model Licence*. <http://www.accesscopyright.ca/educators/aucc-model-licence/>

Access Copyright. *AUCC Model Licence. Schedule B*.
http://www.accesscopyright.ca/media/24287/aucc_model_licence_schedule_b_v2.pdf

Copyright Board. The following sections of the 2013-2014 Annual Report (<http://www.cb-cda.gc.ca/about-apropos/annual-annuel/2013-2014-e.pdf>):

- Mandate of the Board, 7
- Operating Environment, 8–10
- Collective Administration of Copyright, 13–15
- Tariffs Proposed by Collective Societies (2014), 16

Dubowski, Stefan. “Access Copyright's Next Chapter.” *Canadian Lawyer Magazine*. 5 Sept. 2014. <http://www.canadianlawyermag.com/5241/Access-Copyrights-next-chapter.html>

The following chapters of Murray, Laura J., and Samuel E. Trosow. *Canadian Copyright: A Citizen's Guide*, 2nd ed. Toronto: Between the Lines, 2013:

- Chapter 6: Collectives and the Copyright Board, 112–117
- Chapter 15: Education, 207–225

Scan

Access Copyright: Friend or Foe? (video). Copyright and the Modern Academic Debate series. 2-Jun-2014. <https://brockvideocenter.brocku.ca/videos/video/58/>

Copyright Board of Canada. *Copyright Collective Societies*. Updated 13-Nov-2014. <http://www.cb-cda.gc.ca/societies-societes/index-e.html>

Friedland, Martin, L. *Report to Access Copyright on Distribution of Royalties* (aka the Friedland Report), 15 Feb. 2007. <http://www.christophermoore.ca/FriedlandReport.pdf>

Knopf, Howard P. *Canadian Copyright Collectives and the Copyright Board: A Snap Shot in 2008*.

http://www.macerajarzyna.com/pages/publications/Knopf_Canadian_Copyright_Collectives_Copyright_Board_Feb2008.pdf

Introduction

- Copyright collectives have long served to save academic libraries time and resources.
- The increasing reliance on accessible online materials and vendor licences for digital content have changed the dynamic.
- Access Copyright can make some things easier for ILL services, but it's important to understand what the licence actually says.
- Recent developments in copyright law also mean that we need to consider how to formally integrate consideration of other options into ILL requests and service provision.

Direct Instruction

Instructor presents a slide-supported review of the assigned readings, covering:

- Copyright Board – role, authority, conflicts
- Revisit section 30.3 – educational institutions & LAM may have self-serve photocopiers, but require a licence from a reprographic copyright collective
- Collective licence w/ Access Copyright authorizes some uses not permitted by 30.1 or 30.2 (e.g. more liberal digital copying/transmission provisions, more recent materials, fiction, etc)

- 1997 amendments, including addition of statutory damages, caused surge in reliance on collective licence arrangements particularly with the growing demand for electronic service provision
- In its infringement case against York University, AC notes that relying on fair dealing for “systematic copying” is an abuse of s. 29. Compare to CONTU (no such policy in Canada, thus far).
- Closer look at AUCC model licence agreement: “copies for ILL” permitted, but only paper not digital
- Model licence is source of commonly applied amount of dealing: “10% of work or 1 chapter or 1 article”—note: this is whichever is *more*. Therefore 10% should supersede 1 chapter if chapters are short, even if library relies on Copyright Access authorization rather than fair dealing. Note as well that this metric is not determined by statute, nor even jurisprudence.
- What happens if your institution also has vendor licence agreements? Paying twice for some material?

Sharing/Reflection (Class Discussion)

Depending on number of people, either discuss as one group, or break up into small groups and then re-convene to share discussions.

1. Consider Professor’s Request case. Take a closer look at the AUCC Model Licence. Given that the professor’s library has an agreement with Access Copyright but the lending institution does not, can his library order the 20 pages for him based on their own contract or not? What factors does the ILL librarian need to consider?

Closing (Take-Home Question)

What are the copyright policies at your institution?

Consider your ILL case. Was the policy helpful, obstructive, or inconsequential to your ability to meet legal copyright obligations and serve your patron to the best of your ability?

Assessment Methods and Criteria

This course is primarily designed as a professional development workshop that puts assessment in the hands of participants. At the end of each session, participants complete and submit a brief “reflective survey” evaluating what they feel they’ve learned. This allows participants to gauge where they are relative to where they hope to be, and also gives the instructor a sense of what may need to be adapted in future lessons.

Lesson 4 survey

1. On a scale of 1 to 5, please circle the number that best represented your knowledge of the topics covered in this lesson *prior to participating in this class*:

No Knowledge

1

2

3

4

Advanced
Knowledge

5

If copyright law is relevant to your occupational duties, please apply the following scale when answering question 1 above. Prior to participating in this lesson:
--

1 → *I had no way to justify my professional decisions in relation to today's topics based on my knowledge of the law.*
5 → *I could easily justify my professional decisions in relation to today's topics based on my knowledge of the law.*

2. After participating in this lesson, I have gained a better understanding of:

Learning outcomes	Strongly Disagree	Somewhat Disagree	Neither Agree Nor Disagree	Somewhat Agree	Strongly Agree
Role of the Copyright Board	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Purpose and benefits of collectives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Additional authorizations that Copyright Access licence make possible	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
How the AUCC model licence differs from fair dealing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Potential redundancies between fair dealing, the model licence, and other vendor agreements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

After this lesson, I would still like to know more about the following:

Lesson 5. University policies, library practice, the law, users' rights and you

Intended audience

This is a professional development course aimed primarily at staff who provide interlibrary loan services in higher education institutions.

Library school students may also benefit, as well as university administrators involved in copyright decisions related to library services.

Length of lesson: 90 minutes

Brief overview

This lesson examines the intersection of university policies, collective licence agreements, ILL practice, and the user.

Learning outcomes

Participants will:

- understand how copyright collective relations, vendor licences, university policy, and the law intersect in these changing times, and how this intersection impacts ILL practices;
- have an increased understanding of the pros and cons of various copyright policy approaches;
- understand how different policies can impact ILL services and practice, specifically;
- recognize whether their own institution's copyright policy is sufficient or could be changed to better support ILL service provision for both research and classroom activities;
- recognize whether their own institution's ILL request system is sufficient for staff to make informed decisions that respect copyright law while best serving patron needs.

Prerequisites needed to be met by participant before attending this lesson

“Required readings” listed in the Resources section should be completed before attending this session. A quick perusal of the “scan” resources is also advised.

Attendance at lessons 1–4.

Resources

Required readings

Association of Universities and Colleges of Canada. Fair Dealing Policy for Universities. (No date). <http://www.aucc.ca/fair-dealing-policy-for-universities/>

Canadian Association of University Teachers. CAUT Guidelines for the Use of Copyrighted Material. Feb 2013. [http://www.caut.ca/docs/default-source/copyright/revised-caut-guidelines-for-the-use-of-copyrighted-material-\(feb-2013\).pdf](http://www.caut.ca/docs/default-source/copyright/revised-caut-guidelines-for-the-use-of-copyrighted-material-(feb-2013).pdf)

Geist, Michael. The Supreme Court of Canada Speaks: How To Assess Fair Dealing for Education. August 22, 2012. <http://www.michaelgeist.ca/2012/08/scc-on-fair-dealing/>

Law Society of Upper Canada. Access to the Law Policy and Guidelines. (Great Library fair dealing policy at the heart of the *CCH* case). <http://www.lsuc.on.ca/For-Lawyers/Manage-Your-Practice/Research/Access-to-the-Law-Policy-and-Guidelines/>

Trosow, Samuel E. “Fair Dealing Practices in the Post-Secondary Education Sector after the Pentology.” In *The Copyright Pentology*, edited by Michael Geist, 213–234. Ottawa: University of Ottawa Press, 2013.

York University. Fair Dealing Guidelines for York Faculty and Staff (11/13/12).
<http://copyright.info.yorku.ca/fair-dealing-requirements-for-york-faculty-and-staff/>

Scan

Canadian Association of Research Libraries. CARL Supports the AUCC in its Objection to the Proposed Access Copyright Post-Secondary Education Tariff 2011-2013. http://www.carl-abrc.ca/uploads/pdfs/copyright/carl_supp_ac_challenge-e.pdf

Canadian Association of Research Libraries. Digital Locks and Canadian Research Library Collections: Implications for Scholarship, Accessibility, and Preservation. 7 Oct 2012.
<http://www.carl-abrc.ca/uploads/SCC/2012-10-04%20CARL%20Digital%20Locks%20Report.pdf>

Ontario Council of University Libraries. OCU Model Licence Agreements.
<http://www.ocul.on.ca/node/114>

Introduction

- Copyright policies at universities typically aim to address instruction needs such as course packs, online instruction, and e-reserves rather than private study, research, or user-generated content needs of students or faculty.
- Interlibrary loan is less commonly used for classroom activities. Therefore, these policies tend to give less consideration to interlibrary loan issues.
- Many vendor licences and copyright collective licences have specific ILL provisions.
- This may mean that your library’s ILL practice is not well-aligned with university policy, or that policy may not adequately support “users’ rights” outside of the classroom.
- Understanding the letter of the law, jurisprudence, and the current licensing environment can help support informed development of functional ILL policies and practices.

Guided Practice

With the instructor: review the Scholars’ Portal ILL request form, consider the details of the Professor’s Request case, discuss:

- What do we know about the professor’s request that he wouldn’t be able to convey via this form?
- Does this form provide the library with enough information to responsibly determine whether the patron can receive a copy of the requested pages based on fair dealing?

(Resource: Professor’s Request packet, which includes a copy of the Scholars’ Portal form.)

Direct Instruction

Instructor presents a slide-supported review of the assigned readings:

- Revisit SCC case *CCH*: “It is only if a library were unable to make out the fair dealing exception under s. 29 that it would need to turn to s. 30.2 of the *Copyright Act* to prove that it qualified for the library exemption” → relevance to ILL services.
- Review the SCC court arguments regarding the Great Library’s policy.
- Look directly at Great Library’s “document delivery” policy.
- Look at Access Copyright licence’s ILL provisions: Access Copyright forbids digital copies for ILL, even though 2012 30.2 amendment permits this, with certain restrictions.
- Look at York University’s fair dealing policy. No discussion of ILL or related issues.
- Compare the three. What would each mean for ILL service provision?
- Different approaches to “amount of dealing” (comparison chart).
- Different information is required from patron. Compare Great Library form to standard ILL form from Guided Practice. (<http://www.lsuc.on.ca/For-Lawyers/Manage-Your-Practice/Research/Document-Delivery-Request-Form/>)

Sharing/Reflection (Class Discussion)

Depending on number of people, either discuss as one group, or break up into small groups and then re-convene to share discussions.

1. When is Access Copyright model licence beneficial to ILL services specifically, relative to alternative policies? (Base this on your own experiences, as well as readings and class lectures)
2. Consider your own ILL case. Which policy, if any, do you think would have resulted in the best outcome for you and your patron?

Closing (Take-Home Question)

Consider your own institution’s copyright policy, as well as how these impact interlibrary loan services. Consider also the forms you use for interlibrary loans and standards of practice. Now that you’ve taken this course, would you make any specific recommendations to your institution about these policies and practices?

What about serving your patrons? How would you handle Professor Loeb’s request?

Assessment Methods and Criteria

This course is primarily designed as a professional development workshop that puts assessment in the hands of participants. At the end of each session, participants complete and submit a brief “reflective survey” evaluating what they feel they’ve learned. This allows participants to gauge where they are relative to where they hope to be, and also gives the instructor a sense of what may need to be adapted in future lessons.

Lesson 5 survey

1. On a scale of 1 to 5, please circle the number that best represented your knowledge of the topics covered in this lesson *prior to participating in this class*:

No Knowledge					Advanced Knowledge
1	2	3	4		5

If copyright law is relevant to your occupational duties, please apply the following scale when answering question 1 above. Prior to participating in this lesson:
 1 → *I had no way to justify my professional decisions in relation to today's topics based on my knowledge of the law.*
 5 → *I could easily justify my professional decisions in relation to today's topics based on my knowledge of the law.*

2. After participating in this lesson, I have gained a better understanding of:

Learning outcomes	Strongly Disagree	Somewhat Disagree	Neither Agree Nor Disagree	Somewhat Agree	Strongly Agree
Effect of licence agreements and copyright policies on ILL service provision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pros and cons of different policy approaches	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
What is needed in a copyright policy to support ILL services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
How to make better use of copyright law to meet patron needs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Best practice for ILL systems to help ensure adherence to copyright law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

After this lesson, I would still like to know more about the following:

Appendix I. Professor's ILL Request

(Apart from the name of the professor, this is a genuine ILL request):

THE SCENE

Professor Loeb tries to fill out an ILL request form on his university's website (via the Scholars Portal RACER system). However, he's not quite sure how to fit his request into the format required by RACER.

He goes to his university library instead, and asks the ILL librarian if the library can email him a copy of 20 specific pages out of a 384-page book, which he explains are "two chapters", available via interlibrary loan. That book is, in turn, one volume of an eleven volume work.

Professor Loeb says that this is not for a course he is teaching, but for "private study" – background research for a book he is writing.

He provides documentation about the material he wants:

1. The book's bibliographic record, which he acquired from WorldCat.
2. A scan of the work's table of contents, highlighting the pages of interest.

The ILL librarian tells him: "I'm sorry, we won't be able to do that due to copyright restrictions. We're not permitted have more than one chapter copied. But we can order the whole book for you by ILL. It will take x days to get here, and you'll have it for x amount of time."

The borrowing library has a collective licence agreement with Access Copyright. The library that holds the material in question does not. The title in question is listed in Access Copyright's repertoire.

Note: The rest of the materials in this "packet" can be viewed at
<https://www.dropbox.com/sh/u2dhahlzjhs4grh/AAAqYBkA9KEgwsAMcv-PbzaAa?dl=0>