

TO: All MUNFA Members  
FROM: The MUNFA Executive Committee  
DATE: February 17, 2012  
SUBJECT: Developments on Copyright and Fair Dealing

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You may have read that the University of Toronto and University of Western Ontario recently signed an agreement with Access Copyright (Canada's copyright licensing agency). The agreement is even more draconian than the Association of Universities and Colleges of Canada (AUCC) policy (which already makes you responsible for patrolling the behaviour of your colleagues). The agreement between Access Copyright and the two universities capitulates to Access Copyright's unjustified and harmful demands:

**Fees** - The agreements levy a \$27.50 flat rate charge against each full time student or equivalent. The existing flat rate was \$3.75. Students would traditionally pay an additional amount in per page fees for course packs, a levy that is being rendered increasingly irrelevant by fair dealing, open access and site licensing. In this context of increased rights to use copyrighted material, there is no justification for an increase in fees.

**Definition of Copying** - The agreements create new rights to the benefit of Access Copyright that do not exist in copyright law, **specifically by defining copying to include "posting a link or hyperlink to a digital copy."** Given the Supreme Court of Canada's recent ruling (*Crookes v. Newton*) that hyperlinks do not constitute the communication or publishing of content, this concession is, again, not acceptable.

**Duplication of Existing Rights** - Under the *Copyright Act* members of the academic community enjoy broad rights to copy works without permission or payment (fair dealing) and specific exceptions allowing, *inter alia*, the reproduction of works for archival purposes, classroom display and the creation of alternate formats of works to assist the visually impaired. On top of this, institutions also purchase site licenses that provide the right to use, copy and transmit materials. The agreements reached by Western and Toronto require payment to re-secure these exact rights.

**Surveillance** - The agreements mandate the creation of survey instruments to monitor the particular works utilized on campus and the volume of that use. Because the agreements define copying to include transmission by electronic mail and storing, posting, displaying, uploading and linking to digital files, the survey instruments will require intrusive monitoring of professors, librarians, researchers and students that will violate academic freedom and privacy. The proviso in the agreements that the survey will respect privacy policies and academic freedom is risible.

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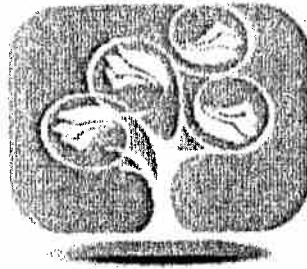
**Content aside, the timing of the agreements is terrible.** It is expected that Bill C-11, *An Act to Amend the Copyright Act*, will be passed by Parliament in the next several months. The legislation contains provisions directly relevant to the use of copyright at educational institutions, provisions that will strengthen the bargaining power of our sector with organizations such as Access Copyright. Similarly a series of copyright decisions are also pending from the Supreme Court of Canada. To have proceeded with an agreement prior to the conclusion of these legislative and judicial proceedings is not acceptable.

**The agreements are unnecessary.** Many institutions have chosen to end their relationships with Access Copyright and pursue modern options for creating and distributing knowledge (fair dealing, open access, site licenses). Others have elected to continue the fight at the Copyright Board, seeking a just determination of the issues through a legitimate judicial process. In contrast, the administrations at Western and Toronto have “solved” their concerns by accepting Access Copyright, even in the face of manifestly better alternatives.

**The agreements undermine solidarity among academic institutions.** Across Canada a new culture of scholarly communication is being developed by the academic community, one reliant on innovative ways to create and access copyrighted works. This effort combines the ingenuity, determination and dedication of students, researchers, librarians and professors as well as administrative, technical and managerial personnel. In signing their agreements with Access Copyright, the University of Western Ontario and the University of Toronto have turned away from this collective effort.

MUNFA will continue to keep you informed of developments on this front. We will encourage MUN’s administration to continue to not enter into an agreement with Access Copyright and to stand steadfast in the position it has taken to date with Access Copyright. At the same time, we will also continue our efforts to broaden MUN’s flexibility permitted under the Copyright Act and the principle of fair dealing.

Attached is a letter of February 12, 2012 from the Newfoundland and Labrador Library Association.



newfoundland and labrador  
**library association**

TO: MUNFA, Executive Committee

FR: The Newfoundland and Labrador Library Association (NLLA)

RE: **Open Letter: Access Copyright and Academic Libraries in Canada**

DATE: February 12, 2012

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In 2011, over 30 Canadian universities and colleges opted out of licensing agreements with Access Copyright, The Canadian Copyright Licensing Agency, due to both Access Copyright's significant increase in per-student fees as well as the introduction of what many considered to be intrusive and impractical monitoring requirements.

The NLLA fully endorses the decision of Canadian universities and colleges to opt out of the proposed Access Copyright agreement, which we feel would have a significant and unnecessary negative impact on teaching and learning and on academic freedom in this country. In January 2012, two universities, the University of Toronto and the University of Western Ontario entered into a voluntary licensing agreement with Access Copyright. Hopefully, other institutions will not emulate this misguided and inexplicable decision.

From a library perspective, one of the most troubling aspects of the deal signed with Access Copyright is that it gives Access Copyright additional rights that simply do not exist under Canada's copyright legislation, specifically, defining copying to include "posting a link or hyperlink to a digital copy", a definition not upheld by the Supreme Court of Canada. Academic

libraries have already paid for access to online content. Having to essentially “pay twice” to link to this content in library reserves, on course sites, or even in an email is unacceptable.

The NLLA strongly urges universities and colleges, particularly those in Newfoundland and in Atlantic Canada, not to capitulate to Access Copyright's unfair and unreasonable demands. The Canadian Association of University Teachers (CAUT) is also condemning the agreement, 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.”

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