



CCH covers Part A

Overview of the Presentation

- Review of the current Access Copyright licence structure
- What is a tariff, and what is the procedure for dealing with a proposed tariff?
- Can an institution choose not to use the proposed Access Copyright tariff?
- What is AUCC doing to help its member institutions in this transition period?
- What are the key features of the proposed Access Copyright tariff?
- What is the main drawback to challenging the proposed tariff?
- What are some possible benefits of fighting the tariff?
- Next steps

Review of the current Access Copyright licence structure

Part A

- Covers interlibrary loan, library reserve copying, administrative copying, and classroom handouts.
- No record keeping or reporting
- Flat annual fee of \$3.38 per Full-Time Equivalent Student (FTE)

Part B

- Covers course pack copying
- Full record-keeping and reporting
- Fee of 10 cents per-page included in purchase price of course pack

*\$11 million - B
\$3 million A*

What is a tariff, and what is the procedure for dealing with a tariff?

- A tariff is a set of standardized terms and conditions drafted by a copyright collective to govern certain uses of copyright works within the collective's repertoire
- Filed with the Copyright Board by March 31 to take effect on January 1 the following year

unclear

What is a tariff, and what is the procedure for dealing with a tariff?

- Once a proposed tariff is published in the Canada Gazette, there is normally a sixty-day window for objection
- Anyone can object
- Hearing process can be very lengthy and expensive

Can an institution choose not to use the Access Copyright tariff?

- Yes, but an institution may face an increase in its legal risk
 - Statutory damages
 - Once the tariff is certified, copies made after January 1, 2011 that are covered by the tariff must have a legal basis outside of the tariff or Access Copyright is entitled to seek payment of tariff for the entire year

What is AUCC doing to help its member institutions in this transition period?

- AUCC and Access Copyright met in May to discuss an interim licence proposal
- Access Copyright agreed to some amendments and to split the interim proposal into two parts:
 - Proposed Licence Extension Agreement
 - Proposed Interim Agreement

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What is AUCC doing to help its member institutions in this transition period?

- AUCC has circulated these two proposals to selected groups of university stakeholders for comment
- Proposals will be considered by the AUCC Board on June 16
- There is NO URGENCY for an institution to sign anything before the AUCC Board meeting
- AUCC will provide further information and recommendations on next steps after the June Board meeting

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What are the key features of the proposed Access Copyright tariff?

- A three-year tariff (2011-2013) covering photocopying and scanning of the works in Access Copyright's repertoire by post-secondary educational institutions outside of Quebec and persons acting under their authority
- proposed annual fee of \$45 per Full-Time Equivalent Student (FTE) for universities and \$35 per FTE for colleges

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What are the key features of the proposed Access Copyright tariff?

- A wide array of copying activities are covered including some electronic uses of scanned copies
- Copying for inclusion in paper or digital format Course Collections is covered, whether copies are made for required or recommended reading

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What are the key features of the proposed Access Copyright tariff?

- Copying limits similar to existing licences except that excerpts included in Course Collections can be up to 20% of a work
- "Authorized Person" who can receive a copy is defined to include students and staff members only
- Once an educational institution ceases to be covered by the tariff, all copies made under the tariff must be destroyed/deleted

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What are the key features of the proposed Access Copyright tariff?

- Annual bibliographic and volume survey of copying including a right of access to an institution's Secure Network (e.g., course management and e-reserves system) because of new scanning component in tariff
- Same right of access for purpose of compliance audits

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What is the main drawback to challenging the proposed tariff?

- Copyright Board proceedings are extremely expensive - estimated legal and professional costs of challenging the tariff are at least \$1.5 to \$2 million.
- strong possibility that the Copyright Board would be brought for judicial review and further appeal to the Supreme Court, adding to this cost

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What are some possible benefits of fighting the tariff?

- Ensuring the best possible terms for institutions that wish to use the tariff
- Ensuring that the survey methodology minimizes the administrative burden on educational institutions and takes into account a broad view of fair dealing for the purpose of excluding copies from the pool of compensable copies

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What are some possible benefits of fighting the tariff?

- Seek to disaggregate different types of copying and remove the scanning component from the photocopying tariff
 - Would allow institutions to choose which types of copying it wishes to have covered
 - Would remove the basis for intrusions by Access Copyright into university networks

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What are some possible benefits of fighting the tariff?

- Specific clauses could be improved:
 - Tightening the definitions of "Copy" and "Digital Copy" to clarify that Access Copyright cannot claim payment for uses that are covered by digital site licences or other agreements
 - Amending the "Course Collection" clause so that it covers only required readings, not supplementary readings

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What are some possible benefits of fighting the tariff?

- Specific clauses could be improved:
 - Deleting/amending the definition of "Staff Member"
 - Improving reporting requirements for Course Collections
 - Making the compliance clause less onerous

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Next steps

- On June 16 the AUCC Board will make a final decision on whether AUCC should lead a collective challenge to the proposed tariff and whether it endorses the draft licence extension and interim agreements proposed by Access Copyright
- Immediately after the Board meeting on June 16, AUCC will communicate the Board's decisions to its member institutions and provide information on next steps

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