



POLICY PAPER

Access Copyright

Excerpt for maroon paper:

This policy paper no longer reflects the needs of students at McMaster due to the fact that McMaster University opted out of its agreement with Access Copyright as of December 31st, 2015. This policy reflects the reasons for why McMaster has terminated its agreement, and should be kept as a reference if the agreement with Access Copyright is brought into question in the future.

Updates

This policy paper is no longer relevant in reflecting the needs of students at McMaster, as McMaster has opted out of its agreement with Access Copyright as of December 31st, 2015¹.

The previously updated policy was passed by the Students Representative Assembly in February 2015², and advocated on behalf of students to leave the Access Copyright agreement. The stance to leave the agreement was based on the fact that being a part of the Access Copyright Agreement provided no additional benefit to students, but provided unnecessary costs. McMaster advocated to leave the agreement as most of the benefits that it provided were already provided under existing federal law.

With the agreement terminated, McMaster's future "copying" must be done in accordance with the University's Fair dealing Policy, and other accommodations can also be made if certain resources do not comply with the limitations outlined in the policy¹. The McMaster library still has access to a vast array of resources, and has access to more than 61,500 e-journals and 660,000 e-books¹. The decision to leave the Access Copyright agreement was made with the best interest of McMaster Students in mind.

Although McMaster has terminated its agreement with Access Copyright, this policy should be kept as a reference material in the case that McMaster's agreement with Access Copyright is brought into question in the future. The following policy describes the principles, concerns and recommendations of the McMaster Students Union prior to leaving the Access Copyright agreement.

¹ McMaster University Copyright <http://www.copyright.mcmaster.ca>

² McMaster Students Union SRA 2014-2015 <https://www.msumcmaster.ca/governance/sra/sra-minutes/sra-2014-2015>

Introduction

As of June 2012, McMaster University has been party to a legal agreement with Access Copyright, a not-for-profit Canadian copyright licensing agency that represents Canadian publishers, authors and artists. The agreement between McMaster University and Access Copyright remits a per-student fee of \$26/Full-Time Equivalent (commonly abbreviated to FTE, or the number of full-time students plus the equivalent number of part-time students at a university) to Access Copyright in exchange for access to a repertoire of copyrighted works including, but not limited to, journal articles, textbooks, literary works, visual art, and musical works that are used for the purposes of education and research within the university.³ Access Copyright will then disperse royalties from universities and other parties to the publishing companies and authors represented by the consortium.⁴

Depending on the university and the nature of the agreement, the \$26/FTE fee to Access Copyright may come from a variety of sources, including ancillary student fees or paid from the general operating fund of the university. In McMaster's case, this fee is paid to Access Copyright primarily through revenues from the sale of courseware.⁵ In this way, although McMaster students are not directly paying into Access Copyright through an ancillary fee, the university maintains an artificially higher price for courseware, thus students are still paying to subsidize Access Copyright's \$26 fee.

Before 2011, Access Copyright operated under a dramatically different model. Their original fee was only \$3.08/FTE plus \$0.10/page in courseware copied/printed at licensed print shops (such as McMaster's own printers). Due to greater digital access to copyrighted works over the Internet, Access Copyright altered their funding model to create a flat fee of \$26/FTE, with no associated courseware tariff. This higher fee theoretically would cover any physical and digital copies done by university students, faculty, and staff.⁶

³McMaster Access Copyright Agreement http://copyright.mcmaster.ca/Access_Copyright_Agreement

⁴Access Copyright Distribution Guidelines <http://www.accesscopyright.ca/creators/distribution-guidelines/>

⁵McMaster Consolidated Budget, 2013-14, http://www.mcmaster.ca/bms/pdf/2013-14_budget.pdf

⁶Policy: Ancillary Fees. Ontario Undergraduate Student Alliance, <http://www.ousa.ca/wordpress/wp-content/uploads/2013/11/Ancillary-Fees-November-25-2013.pdf>

Principle One: Students should have access to ample educational resources in order to obtain a fulfilling educational experience.

Access to learning material is essential for students to learn and for professors to teach effectively and fulfill their educational experience. At McMaster, the MSU also strives to provide students with the educational resources that they need to learn to their fullest potential in all areas of study. This includes copyrighted works, original material, and online resources used as courseware and for research purposes. The library system also provides an extensive online database garnered from subscriptions totally several million dollars.⁷

Principle Two: Students should not bear unnecessary costs for their education.

The cost of post-secondary education in Ontario is the highest in the country, and has been steadily increasing over the years.⁸ Despite the cap on tuition hikes in Ontario at 3% (which is still above inflation)⁹, universities have found other ways to pass charges onto students. This includes raising compulsory ancillary as well as courseware fees, both of which are not regulated by the government. Textbooks further increase the financial burden on the undergraduate population and are estimated to cost anywhere between \$800-1000 per year of undergraduate studies.¹⁰

For these reasons, it is evident that students should not pay excessive or unnecessary expenditures to the university. Resource and funding allocations should maximize efficiency to minimize the cost of attending McMaster, therefore increasing accessibility to all students regardless of socioeconomic status.

Principle Three: Students should be provided with opportunities to become aware and involved in policies that affect their education.

The McMaster Student Union (MSU) provides a breakdown of the supplementary fees that it collects from students, which is provided readily on the McMaster MSU website (www.msumcmaster.ca). It also makes students aware of certain fees that they can opt out of, if the benefit is unneeded. Examples of these are health plans and dental plans.¹¹ This ensures that students are fully aware and support the ways in which their fees are being used. In addition, there are a variety of

⁷ Ontario university tuition \$9,483 by 2017: report
http://www.thestar.com/yourtoronto/education/2014/09/09/ontario_university_tuition_9483_by_2017_report.html

⁸ Ontario university tuition \$9,483 by 2017:report
http://www.thestar.com/yourtoronto/education/2014/09/09/ontario_university_tuition_9483_by_2017_report.htm

⁹ Ontario puts 3-per-cent cap on tuition hikes for next four years
<http://www.theglobeandmail.com/news/national/education/ontario-puts-3-per-cent-cap-on-tuition-hikes-for-next-four-years/article10482283/>

¹⁰ Budget for student life-How much will your post-secondary education cost?
<http://www.fcac-acfc.gc.ca/Eng/forConsumers/lifeEvents/payingPostSecEd/Pages/Budgetfo-Unbudget.aspx>

¹¹ Your Money <https://www.msumcmaster.ca/governance/your-money>

opportunities for students to enter discussions surrounding the operation and governance of the MSU, such as speaking at SRA meetings, working with the Board of Directors, or running for one of the many committees the MSU uses to improve its organization. These strategies have been well-received by MSU members, and this same level of integration between the student body and an organization is integral to the passing of McMaster University policies as well.

Concern One: The Access Copyright agreement with McMaster University provides no extra benefit to students not already provided by existing federal law.

The current issue that students have with Access Copyright is that current Canadian Copyright law and rulings from the Supreme Court of Canada already allow 'fair use' of copyrighted materials, without the protections of being a member of Access Copyright. Under the Copyright Act of Canada, the use of copyrighted materials for the purposes of education is legally defined as "fair dealing".¹² Although fair dealing exemptions have been in place since 1921, the question surrounding the necessity of Access Copyright was brought to light in 2011 with the advent of Access Copyright's new \$26/FTE fee structure and a number of notable court decisions around the same time.

The concept of fair dealing is fairly nuanced to those without a strong legal background. Clarification of fair dealing for the purposes of education was passed into federal law in 2012 through Bill C-11, An Act to Amend the Copyright Act. Bill C-11 clarified use of copyrighted materials in Canadian universities constitutes fair dealing.¹³ To qualify an instance of copying under the fair dealing exception, the dealing must fulfill two criteria: (a) the copying is to be used for research, private study, education, parody, satire, criticism or review and news reporting, and (b) the dealing must be fair.¹⁴

The criterion of use for the purposes of education is clearly satisfied in Canadian universities. The more complicated criterion is what classifies as "fair", as it is not defined in the Copyright Act of Canada. However, legal judgments from the Canadian courts have indeed set precedent for future situations. In July 2012, the Supreme Court of Canada ruled against Access Copyright in the case of Alberta (Education) vs. Canadian Copyright Licensing Agency (Access Copyright).¹⁵ Legal experts agree that this ruling will allow institutions to utilize the fair dealing copyright exemption for everyday classroom use, including digital and paper copies for students from professors, including material that Access Copyright claims it licenses.^{16 17}

¹² Copyright Act of Canada, <http://laws-lois.justice.gc.ca/eng/acts/C-42/>

¹³ Legislative Summary of Bill C-11: An Act to Amend the Copyright Act, http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?ls=c11&Parl=41&Ses=1

¹⁴ Copyright Act of Canada, <http://laws-lois.justice.gc.ca/eng/acts/C-42/>

¹⁵ Supreme Court of Canada: Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright) <http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/item/9997/index.do>

¹⁶ Ariel Katz, Eviscerated or Not: More on the Access Copyright Question <http://www.law.utoronto.ca/blog/faculty/eviscerated-or-not-more-access-copyright-question>

¹⁷ Michael Geist, Why the Supreme Court's Copyright Decisions Eviscerate Access Copyright's Business Model, <http://www.michaelgeist.ca/content/view/6593/125/>

Moreover, McMaster's current agreement with Access Copyright realistically provides very little extra coverage beyond what is already covered by fair dealing. Table 1 provides a side-by-side analysis of what is covered under the Access Copyright agreement vs. what is covered under fair dealing. In most cases, the coverage provided by Access Copyright is exactly the same as what universities would get without the agreement. In the instance of 'chapters from a book', Access Copyright actually limits the amount of copying done when compared to fair dealing guidelines. It is apparent that the model Access Copyright agreement is unnecessary for universities at best, and is swindling students, at worst.

Unfortunately, due to pressure from Access Copyright, in addition to the creation of a model agreement from the Association of Universities and Colleges of Canada (AUCC), many universities felt obliged to sign onto the new agreement. Upon creation of the AUCC model agreement, multiple groups publically condemned Access Copyright, including OUSA^{18 19}, CASA²⁰, the Canadian Association of University Teachers (CAUT), the Canadian Federation of Students (CFS),²¹ legal experts^{22 23}, and multiple other stakeholders. These groups continue to maintain this position.

Table 1: A comparative analysis of copying coverage under McMaster's Access Copyright Agreement versus coverage under fair dealing.

McMaster Agreement with Access Copyright ²⁴	Covered under Fair Dealing ²⁵
Copy of up to 10% of a Repertoire Work, or 20% as part of a Course Collection (e.g. courseware)	Up to 10% of a copyrighted work, including a literary work, musical score, sound recording, or audiovisual work
An entire newspaper article, single periodical article (e.g. journal article) or entire page of a newspaper or periodical	An entire newspaper article, single periodical article (e.g. journal article), or entire page of a newspaper or journal
One chapter from a book, provided it is no more than twenty per cent (20% of a book);	One chapter from a book
An entire entry from an encyclopedia,	An entire entry from an encyclopedia,

¹⁸ Chris Martin, "An Access Copyright Update" <http://www.ousa.ca/2012/06/21/an-access-copyright-update-by-chris-martin-june-21-2012/>

¹⁹ Policy: Ancillary Fees. Ontario Undergraduate Student Alliance, <http://www.ousa.ca/wordpress/wp-content/uploads/2013/11/Ancillary-Fees-November-25-2013.pdf>

²⁰ Open Letter to the AUCC Concerning the Access Copyright Agreement. Canadian Alliance of Student Associations, <http://www.casa-acae.com/release/open-letter-to-the-aucc-concerning-the-access-copyright-agreement/>

²¹ Joint Objection of the Canadian Federation of Students and the Canadian Association of University Teachers to the Access Copyright Post-Secondary Educational Institution Tariff, 2014-2016, Joint release from the Canadian Association of University Teachers (CAUT) and Canadian Federation of Students (CFS), <http://www.caut.ca/docs/default-source/copyright/caut-cfs-objection-to-access-copyright-tariff-%282014-2016%29.pdf?sfvrsn=4>

²² Michael Geist: "Access Copyright's Desperate Declaration of War Against Fair Dealing". <http://www.michaelgeist.ca/content/view/6818/125/>

²³ Ariel Katz, "Access? Copyright!" <http://arielkatz.org/archives/1273>

²⁴ McMaster Access Copyright Agreement http://copyright.mcmaster.ca/Access_Copyright_Agreement

²⁵ Fair Dealing Guidelines, University of Toronto <http://www.provost.utoronto.ca/Assets/Provost+Digital+Assets/26.pdf>

annotated bibliography, dictionary or similar reference work;	annotated bibliography, dictionary, or similar reference work, provided that you copy no more of the work than needed to achieve an allowable purpose;
A single short story, play, poem, essay, or article form a Published Work that contains other Published Work	An entire single poem or musical score from a copyrighted work containing other poems or musical scores.
An entire reproduction of an artistic work (including any drawing, painting, print, photograph, or other reproduction of a work of sculpture, architectural work or work of artistic craftsmanship) from a Published Work that contains other Published Works;	An entire artistic work (including a painting, print, photograph, diagram, drawing, map, chart, and plan) from a copyright-protected work containing other poems or musical scores;

Concern Two: Students are paying inflated courseware costs for very little extra copyright coverage.

The increased fee of \$26/FTE student for the Access Copyright license inflates the cost of courseware for students as well as the university for a relatively antiquated service. Under the recent clarifications of “fair dealing” as outlined above, students are paying for a service that provides little extra protection, and at times can even restrict the freedom of users.

Concern Three: Students are not aware of the rationale behind high courseware fees and of where their money is being allocated.

Due to pressure from Access Copyright, in addition to the creation of a model agreement from the Association of Universities and Colleges of Canada (AUCC), many universities felt obliged to sign onto the new agreement. Upon creation of the AUCC model agreement, multiple groups publically condemned Access Copyright, including OUSA²⁶ ²⁷, CASA²⁸, the Canadian Association of University Teachers (CAUT), the Canadian Federation of Students (CFS),²⁹ legal experts³⁰ ³¹, and multiple other stakeholders. These groups continue to maintain this position.

²⁶ Chris Martin, “An Access Copyright Update” <http://www.ousa.ca/2012/06/21/an-access-copyright-update-by-chris-martin-june-21-2012/>

²⁷ Policy: Ancillary Fees. Ontario Undergraduate Student Alliance, <http://www.ousa.ca/wordpress/wp-content/uploads/2013/11/Ancillary-Fees-November-25-2013.pdf>

²⁸ Open Letter to the AUCC Concerning the Access Copyright Agreement. Canadian Alliance of Student Associations, <http://www.casa-acaec.com/release/open-letter-to-the-aucc-concerning-the-access-copyright-agreement/>

²⁹ Joint Objection of the Canadian Federation of Students and the Canadian Association of University Teachers to the Access

Copyright Post-Secondary Educational Institution Tariff, 2014-2016, Joint release from the Canadian Association of University

Teachers (CAUT) and Canadian Federation of Students (CFS), [http://www.caut.ca/docs/default-source/copyright/caut-cfs-](http://www.caut.ca/docs/default-source/copyright/caut-cfs-objection-to-access-copyright-tariff-%282014-2016%29.pdf?sfvrsn=4)

[objection-to-access-copyright-tariff-%282014-2016%29.pdf?sfvrsn=4](http://www.caut.ca/docs/default-source/copyright/caut-cfs-objection-to-access-copyright-tariff-%282014-2016%29.pdf?sfvrsn=4)

³⁰ Michael Geist: “Access Copyright’s Desperate Declaration of War Against Fair Dealing”.

<http://www.michaelgeist.ca/content/view/6818/125/>

³¹ Ariel Katz, “Access? Copyright!” <http://arielkatz.org/archives/1273>

The AUCC model agreement limits the storage, distribution, and sharing of copyright works. As well it allows access to student and faculty member e-mails, which has been hailed as an invasion of privacy.^{32 33}

Furthermore, Access Copyright has been accused of unequal and questionable practices when distributing copyright royalties.³⁴ A large portion (30%) of revenue is spent on administrative costs, while a further 20% were sent to foreign organizations in 2011, majority of which were in the United States.³⁵ Students are not aware of these controversial practices associated with Access Copyright and the copyright agreement signed by McMaster University. As such, they remain ignorant of the issue and lack the tools to act in an appropriate and well-informed manner.

Recommendation One: Terminate the agreement between McMaster University and Access Copyright at the earliest possible date.

In December 2013, the University of Toronto and Western University both formally ended their agreements with Access Copyright.^{36 37} A Western University statement from December 11 2013 read, “During the term of the current agreement, a new federal Copyright Modernization Act was passed into law in 2012 and the Supreme Court of Canada also issued rulings that have altered the landscape considerably with respect to fair dealing and the use of published materials for education without seeking permission of the copyright holder or paying a royalty.”³⁸

Multiple other large Canadian institutions, such as the University of British Columbia, Carleton University, Queen’s University, and the University of Guelph do not currently have agreements with Access Copyright, preferring to operate using a system of education, information and services when it comes to copyright. Their actions and progress should serve as an example by which McMaster University can also operate without a license with Access Copyright. Moreover, ending the agreement between McMaster University and Access Copyright will considerably

³² A Bad Deal: AUCC/Access Copyright Model License Agreement

<http://www.caut.ca/news/2012/05/22/a-bad-deal-aucc-access-copyright-model-license-agreement>

³³ Open Letter to the AUCC Concerning the Access Copyright Agreement. Canadian Alliance of Student Associations,

<http://www.casa-acae.com/release/open-letter-to-the-aucc-concerning-the-access-copyright-agreement/>

³⁴ Backgrounder: Access Copyright

<http://cfsontario.ca/downloads/CFS-AccessCopyright-Backgrounder.pdf>

³⁵ The Economics Behind Access Copyright

<http://www.michaelgeist.ca/2011/05/economics-of-access-copyright/>

³⁶University of Toronto’s license with Access Copyright set to end, December 11, 2013.

<http://media.utoronto.ca/media-releases/university-of-torontos-license-with-access-copyright-set-to-end/>

³⁷Western Statement on Access Copyright Negotiations, Dec. 11, 2013.

http://communications.uwo.ca/western_news/stories/2013/December/western_statement_on_access_copyright_negotiations.html

³⁸Western Statement on Access Copyright Negotiations, Dec. 11, 2013.

http://communications.uwo.ca/western_news/stories/2013/December/western_statement_on_access_copyright_negotiations.html

reduce costs for the University by over \$650,000/year, which can be directly transferred into savings for students.

Recommendation Two: Adopt and distribute a set of fair dealing guidelines that is easily accessible by faculty, staff, and students.

Both universities have taken careful, yet logical steps to ensuring that any copying done by university faculty, staff, or students is either (a) already licensed through their multimillion dollar library acquisitions, or (b) copied in a manner that is fair. For example, the University of Toronto has created multiple guidelines for faculty members to follow when providing digital or printed copies of copyrighted material to their classes and continues to ensure all instructors are kept up to date with new developments.³⁹ This due diligence on the part of the university is important to ensure that any/all copyrighted material does not infringe the Copyright Act of Canada.

Recommendation Three: Appoint a legal copyright consultant within the libraries to advise the McMaster community when issues of fair use arise.

The University of Waterloo operates under a similar model of due diligence through the use of copyright guidelines, and an in-house librarian team who act in the capacity of copyright legal consultants, at a far smaller cost than Access Copyright.⁴⁰

McMaster University should adopt a similar structure and appoint a legal expert to ensure that the actions of students and staff do not violate the Copyright Act of Canada. This is crucial in order to avoid legal skirmishes such as the one between York University and Access Copyright in April 2013.⁴¹ The legal proceedings of which will come at a great financial and temporal cost to the University.

Recommendation Four: Lower the per-page cost of courseware through reallocation of cost-savings.

If McMaster University no longer pays a fee to Access Copyright, the savings should be accurately reflected in the price of courseware. The per-page cost of courseware should be decreased to directly pass on the savings to students, therefore making the overall cost of university more affordable.

Currently, McMaster University is unnecessarily remitting over \$650,000/year to Access Copyright. This represents an artificially inflated cost of courseware to McMaster students. The MSU believes that access to learning material is essential for students to learn and for professors to teach effectively. McMaster's library offers

³⁹ Fair Dealing Guidelines, University of Toronto.

<http://www.provost.utoronto.ca/Assets/Provost+Digital+Assets/26.pdf>

⁴⁰ University of Waterloo Copyright Guidelines: Contacts <https://uwaterloo.ca/copyright-guidelines/about/people>

⁴¹ Access Copyright's next chapter <http://www.canadianlawyermag.com/5241/Access-Copyrights-next-chapter.html>

student and faculty access to print material and electronic databases, paid for through tuition fees and government grants. Additionally, fair dealing rulings codified in Canadian legislation and case law have emphasized the non-necessity of Access Copyright. Finally, the ability of multiple universities (of similar size and scope to McMaster) to operate without paying into Access Copyright clearly demonstrates that the agreement is not necessary.