

File / Dossier : Access Copyright, Post-Secondary Educational Institutions Tariff, 2011-2017 /  
Access Copyright, Tarif pour les établissements d'enseignement postsecondaires,  
2011-2017

January 14, 2016

**[CB-CDA 2016-006]**

## **NOTICE OF THE BOARD**

Access shall respond to the following questions at its earliest convenience.

### General Questions:

1. Access filed three analytic reports (AC-4, AC-14, and AC-25), relating to three datasets (ACCC, U of T, and coursepacks, respectively). Was any fair-dealing analysis conducted on the documents the copying of which was reported in these three datasets? Were any adjustments made for fair dealing in these three analytical reports?
2. According to AC-12, Table 3, universities copy substantially more than colleges in coursepacks up until 2010. Does Mr. Heys agree that this is a feature of the data that likely continued into 2011-2013 and 2014-2017?
3. In AC-20, Mr. Heys gives several reasons why the previous payment of about \$19 should be adjusted upwards to \$26: digital copying, risk-shifting, and inflation. Can he provide an assessment of the relative importance of these three factors?
4. In AC-25, Table 3.7, Mr. Gauthier reports copying by model type for ACCC institutions. What is the definition of "model licensee"? What is the definition of "unlicensed institution"? In particular, what is the definition of unlicensed institution for the years 2005-2010? Is it an institution that became unlicensed after 2010? Does he use the same definition for Table 3.8? How does Access obtain data for unlicensed institutions? Is the definition of unlicensed institution the same in AC-30 as it is in AC-25?
5. In AC-30, at paragraph 155, Mr. Dobner linked increasing revenues with decreasing returns to scale? How is this link causal?
6. In AC-31, Table 1, Mr. Heys shows a decrease in the number of institutions paying \$26 and a corresponding increase in the number of institutions paying lower prices (\$12 - \$18). Is this indicative of a decrease in demand for Access licences? If so, how does he justify continuing to claim that \$26 is the FMV price for the 2014-2017 tariff?

### Questions Re: Compensability of Digital Copying:

7. According to AC-22 and AC-23, it appears that Access only asked its publisher affiliates, not its creator affiliates, to waive the Digital Deletion Clause retroactive to January 1, 2010.
  - a) Is this a correct assumption?
  - b) If so, please explain why creators have not been asked to waive the Digital Deletion Clause.
  - c) Please describe the impact of this on Access' ability to license digital rights on behalf of creators.

d) Why did Access only ask publishers to waive the Digital Deletion Clause whereas it asked both publishers and creators to sign the 2015 Affiliation Agreement?

8. According to AC-33, paragraph 2, 55 per cent of creators have not signed the 2015 Affiliation Agreement. Please describe the impact of this on Access' ability to license digital rights on behalf of creators.

9. In AC-23, paragraph 7, Access wrote as follows: "In AC-2, the witnesses indicate that creators can register with Access Copyright. As of the Spring of 2015, Access Copyright is no longer offering creators the option of registering. For any affiliate or creator registrant that has not migrated to the new affiliation agreement, his or her agreement or registration continues to apply." [Our underlining]

Please explain what this means. In doing so, explain the difference between an affiliated creator and a creator registrant, as well as the reasons underlying this change.

10. In AC-33A, Access provides, for each of its 598 publisher affiliates, an indication of whether they have retroactively waived the Digital Deletion Clause and whether they have signed the 2015 Affiliation Agreement.

- a) Access shall provide the Board with the numbers and percentages of publishers:
- that have signed both the waiver and the 2015 Affiliation Agreement;
  - that did not sign the waiver but signed the 2015 Affiliation Agreement;
  - that signed the waiver but not the 2015 Affiliation Agreement; and,
  - that did not sign the waiver nor the 2015 Affiliation Agreement.
- b) For each of those four categories, please describe the impact on Access' ability to license digital rights.

11. Access shall provide the Board with submissions on the opposability of retroactively waiving the Digital Deletion Clause on third parties, namely the users targeted by the tariff. In other words, explain the effect on the users targeted by the tariff of retroactively waiving the Digital Deletion Clause that was included in the former affiliation agreement entered into between Access and its rights holders.