

PROPOSED TARIFF

Filed with the Copyright Board by The Canadian Copyright Licensing Agency (Access Copyright) on 2022-10-14 pursuant to subsection 67(1) of the *Copyright Act*

Proposed Tariff Title: *Access Copyright Post-Secondary Educational Institution Tariff, 2024-2026*

For the reproduction, communication to the public by telecommunication or making available to the public by telecommunication, or the authorization of any such act, in Canada, of works in Access Copyright's repertoire

Effective Period: 2024-01-01 – 2026-12-31

ACCESS COPYRIGHT POST-SECONDARY EDUCATIONAL INSTITUTION TARIFF, 2024-2026

[NOTE TO PROSPECTIVE USERS: ACCESS COPYRIGHT files the present tariff with the Copyright Board (the “Board”) following the decision of the Supreme Court of Canada in *York University v. Canadian Copyright Licensing Agency (Access Copyright)*, 2021 SCC 32, dated July 30, 2021 (the “York Decision”). Given the potential for policy, legal or regulatory changes that could result from the York Decision or other copyright developments, ACCESS COPYRIGHT files its tariff with the recognition that modifications may be appropriate or necessary, and reserves the right to propose such changes or withdraw its proposed tariff in accordance with the *Act* and the Board's process as may be justified.]

STATEMENT OF ROYALTIES TO BE COLLECTED BY THE CANADIAN COPYRIGHT LICENSING AGENCY (ACCESS COPYRIGHT)

For the reproduction and authorization to reproduce in Canada, in ~~2015~~2024, ~~2016-2025~~ and ~~2017~~2026, the works in Access Copyright's repertoire by post-secondary educational institutions and persons acting under their authority.

1. *Short Title*

This tariff may be cited as the *Access Copyright Post-Secondary Educational Institution Tariff*, ~~2015-2017~~2024-2026.

2. *Definitions*

For the purposes of this tariff, the following definitions apply:

“academic year” means the 12-month period from September 1 to August 31; (« *année scolaire* »)

“authorized person” means

- (a) a student;
- (b) a staff member; or
- (c) any other person who is entitled to in-person or remote library privileges at the educational institution; (« *personne autorisée* »)

“authorized purposes” means all purposes within or in support of the mandate of the educational institution; (« *fins autorisées* »)

“copy” means a reproduction, communication to the public or making available of a repertoire work by, as a consequence of, or for the purpose of

- (a) reproducing by a reprographic process, including by photocopying and xerography;
- (b) scanning;
- (c) printing;
- (d) transmitting by electronic mail or fax;
- (e) storing on a local storage device or medium;
- (f) posting, uploading, or storing on a secure network;
- (g) transmitting from a secure network and storing on a local storage device or medium;
- (h) projecting an image using a computer or other device; or
- (i) displaying on a computer or other device; (« *copie* »)

“copying” means making a copy; (« *copier* »)

“course collection” means, for use by an authorized person as part of a course of study, and whether for required or recommended reading for the course of study or otherwise:

(a) paper copies or digital copies of published works assembled into course packs; or

(b) digital copies of published works that are posted on, uploaded to, or stored on a secure network; (« *ensemble de cours* »)

“course of study” means a course, unit or program of academic, continuing, professional or vocational study administered or hosted by the educational institution; (« *cours* »)

“educational institution” means an institution located in Canada (except in the province of Quebec) that provides post-secondary, continuing, professional, or vocational education or training; (« *établissement d’enseignement* »)

“full-time-equivalent student” means a full-time student or the equivalent of one full-time student of the educational institution; (« *étudiant équivalent à temps plein* »)

“FTE determination date” means the date as of which the number of full-time-equivalent students is calculated by the educational institution for any given academic year; (« *date de détermination de l’ETP* »)

“published work” means a literary, dramatic or artistic work protected by copyright in Canada, of which copies have been made available to the public with the consent or acquiescence of the copyright owner, but excludes a musical work; (« *œuvre publiée* »)

“repertoire work” means a published work for which Access Copyright has been authorized to collectively administer the making of copies; (« *œuvre du répertoire* »)

“secure network” means an electronic network, Internet or cloud-based storage service that is operated by the educational institution, or operated for and subject to the control of the educational institution (such as a network hosted by a third party and/or accessible through a web interface) and that is only accessible by an authorized person authenticated by a user name and password or other equally secure method; (« *réseau sécurisé* »)

“staff member” means, in respect of the educational institution,

(a) an instructor, lecturer or sessional lecturer;

(b) an assistant, associate, full, visiting, adjunct, replacement or seconded professor;

(c) a teaching or research assistant, tutor, fellow or postgraduate fellow;

(d) a demonstrator, proctor, invigilator, or marker;

(e) a librarian or library assistant;

- (f) a lab monitor, clinical instructor or clinician;
- (g) a counsellor;
- (h) an academic administrator;
- (i) a medical resident;
- (j) administrative support staff for any of the positions above;
- (k) any other person in a position essentially comparable to any of those listed above; and
- (l) any employee, regardless of his or her position;

in each case, whether the person in question is paid or unpaid; (« *membre du personnel* »)

“student” means a person registered or engaged in a course of study; (« *étudiant* »)

“university” means an educational institution that

- (a) is specifically recognized as a “university” under Canadian law;
- (b) is accepted as a member institution of ~~the Association of Universities and Colleges of Canada~~
~~or~~ Universities Canada;
- (c) is accredited as a university by a recognized accreditation body; or
- (d) has 50 per cent or more of its students enrolled in degree programs requiring three or more years of full-time study. (« *université* »)

3. *Grant of Rights*

(1) The tariff entitles an educational institution or an authorized person to

- (a) make copies of up to 20 per cent of a repertoire work or make copies of
 - (i) an entire page or article from a magazine, journal or newspaper that is a repertoire work,
 - (ii) an entire short story, play, poem, essay or article from a repertoire work that contains other published works,
 - (iii) an entire entry or article from a reference work that is a repertoire work,
 - (iv) an entire reproduction of an artistic work (including any drawing, painting, print, photograph or other reproduction of a work of sculpture, an architectural work of art or a work of artistic craftsmanship) from a repertoire work that contains other published works, or
 - (v) an entire chapter from a book that is a repertoire work, provided that it is no more than 25 per cent of that repertoire work,

for any authorized purpose, including for use in a course collection; and

(b) make a single copy of a repertoire work in accordance with this section for the purpose of interlibrary loan to an institution or corporation licensed by Access Copyright or to any non-profit educational institution, library, archive or museum.

(2) This tariff does not authorize copying from the same repertoire work for one course section beyond the limits set out in this section.

(3) For greater certainty, this tariff does not authorize the reproduction of a work contained in a published work if the former work is not itself a repertoire work.

(4) For greater certainty, this tariff does not authorize the making available, distribution, or transmission of a repertoire work to a person who is not an authorized person.

4. *Subcontractors and Other Third-Parties*

(1) The educational institution may authorize by written agreement a person other than an authorized person

(a “subcontractor”) to perform the acts set out in paragraph 3(1)(a) for paper course packs only, provided that

(a) a record is kept of all such written agreements;

(b) the educational institution provides that record and each written agreement to Access Copyright within 30 days after such agreement is entered into; and

(c) the subcontractor permits all reporting under this tariff and complies with all conditions, restrictions, and limitations set out in this tariff.

(2) The subcontractor may further subcontract the acts set out in paragraph 3(1)(a) for paper course packs only, provided that the subcontractor’s subcontractor permits all reporting under this tariff and complies with all conditions, restrictions and limitations set out in this tariff.

(3) Upon request from the educational institution, Access Copyright may authorize a third party that is licensed by Access Copyright to perform the acts set out in paragraph 3(1)(a) on behalf of the educational institution for paper course packs only.

(4) The royalties to be paid under section 5 include payment for the copying performed by a subcontractor or other third party in accordance with this section.

~~(5) Where a subcontractor has paid royalties to Access Copyright for copies that are otherwise authorized by this tariff, the educational institution is entitled to a credit for the amount of royalties paid by the subcontractor to Access Copyright against any royalties to be paid by the educational institution under this tariff, provided that it supply to Access Copyright, by the time payment for that academic year is due in accordance with subsection 6(3):-~~

~~(a) a copy of the agreement with the subcontractor; and~~

~~(b) an accounting of royalties, an invoice, or other such information from which the royalties paid by the subcontractor can reasonably be ascertained.~~

5. Royalties

(1) For each academic year during the term of this tariff, the educational institution shall pay to Access Copyright a royalty calculated by multiplying the number of its full-time-equivalent students, as of the FTE determination date for the prior academic year, by the royalty rate of

(a) \$1~~5.654~~4.31, if the educational institution is a university; or

(b) \$~~65.501~~1, if another educational institution.

(2) For academic years ~~2014~~2023-~~2015~~24 and ~~2017~~26-~~2018~~27, the royalties are ~~reduced by half~~prorated on a monthly basis.

6. Payment

(1) The amount payable by an educational institution under this tariff is _

~~(a) the royalties calculated pursuant to section 5, increased by the applicable federal and provincial taxes;~~

~~(b) less any credit assessed pursuant to subsection 4(5).~~

~~(2) The interest payable by an educational institution shall be the amount in (1), less any federal or provincial taxes included therein, multiplied by the interest factors in the following table:~~

Academic Year	Interest Factor
2014-2015	0.0717
2015-2016	0.0610
2016-2017	0.0535
2017-2018	0.0457

~~(2)~~ For each academic year, the educational institution shall supply a written notice specifying the number of FTE students by no later than 15 days prior to the start of each academic year during the term of the tariff.

(3) Access Copyright shall issue the educational institution an invoice setting out the manner in

which the royalties were calculated and the amounts payable within 10 days of receiving the written notice required pursuant to section 6(2).

(4) The royalties shall be paid no later than 30 days after the educational institution has received the invoice required pursuant to section 6(3).

~~(a) subject to (4), pay the amounts in (1) and (2);-~~

~~(b) supply a report setting out the FTE calculation used as the basis of the royalty calculation in section 5; and~~

~~(c) supply the calculations for the determination of the amounts in (1) and (2),-~~

~~no later than the later of November 15 of the subsequent academic year and three months after the approval of this tariff.~~

~~(4) Where the amount payable calculated in (1) is less than zero dollars (\$0), the amounts calculated in (1) and (2) will be refunded by Access Copyright to the educational institution within three months following the receipt of the information required in (3).~~

(5) Any payment ~~required under (3) or any refund required under (4),~~ not received by Access Copyright by its ~~the respective~~ due date, shall bear interest from such due ~~that~~ date until the date the payment is received. Interest on any unpaid balance shall be calculated daily at a rate equal to 1 per cent above the Bank Rate effective on the last day of the previous month (as published by the Bank of Canada). Interest shall not compound.

7. Reporting

(1) For each course collection copied under this tariff, the educational institution shall compile a record in a form set out by Access Copyright of

(a) course of study name;

(b) course of study code;

(c) term start and end date;

(d) number of authorized persons for the course of study;

(e) ISBN/ISSN for each published work;

(f) title of each published work, article and chapter (if applicable);

(g) publication year or volume number for each published work (if applicable);

(h) author(s) of book/chapter/article (as applicable) for each published work;

(i) publisher name;

(j) start and end page copied from each published work;

(k) total number of pages copied from each published work;

(l) total number of sets copied of each course collection;

(m) subcontractor copying a course collection (if applicable); and

(n) new published works added to the course collection in the reporting month.

(2) For each academic year during the term of this tariff, the educational institution shall forward the record in section 7(1) to Access Copyright for course collections made between:

- i. September 1st and December 31st by no later than February 28th;
- ii. January 1st and May 31st by no later than July 31st; and
- iii. June 1st and August 31st by no later than October 31st.

78. Records Retention and Audit

(1) The educational institution shall keep and preserve, until the later of three years after the end of the academic year to which they relate and one year after the approval of this tariff, records from which the royalties payable pursuant to this tariff can be readily ascertained.

(2) Access Copyright may audit these records, no more than once for all completed academic years at the time of the approval of this tariff, and no more than once for each other academic year, on giving ten business days' written notice to the educational institution. For the purpose of these audits, Access Copyright shall have the right of access during normal business hours only to those parts of the premises of the educational institution reasonably necessary to access the records retained pursuant to (1).

(3) Access Copyright shall supply a copy of the report of the audit to the educational institution.

(4) If an audit conducted in accordance with this section reasonably determines that royalties invoiced by Access Copyright have been understated in respect of any royalties that ought to have been paid pursuant to this tariff by more than 10 per cent, the educational institution shall pay the reasonable costs of the audit.

(5) Adjustments in the amount of royalties (and audit costs if applicable) owed as a result of an audit under this section, or as a result of an error or omission, shall be paid or refunded within sixty business days of receipt of notice of such adjustments.

79. Addresses for Notices and Payment

(1) The educational institution shall send all notices, payments (other than by electronic bank transfer) and other communications pursuant to this tariff to

President and CEO, Access Copyright
The Canadian Copyright Licensing Agency
69 Yonge Street, Suite 1100
Toronto, Ontario
M5E 1K3
Telephone: 416-868-1620
Fax: 416-868-1621
Email: postsec@accesscopyright.ca

(2) Access Copyright shall send all communications pursuant to this tariff to the educational institution's last address of which Access Copyright has been notified in writing.

910. *Delivery of Notices and Payment*

(1) For a notice under this tariff to be valid, it must be in writing and delivered by hand, courier, postage-paid mail, fax or email. A payment may be delivered by hand, courier, by postage-paid mail or by electronic bank transfer.

(2) Anything mailed in Canada shall be presumed to have been received three business days after the day it was mailed, in the absence of evidence to the contrary.

(3) A notice or payment sent by fax, by email or by electronic bank transfer shall be presumed to have been received on the first business day following the day it is transmitted, in the absence of evidence to the contrary.