



FACT SHEET

Access Copyright Tariffs Post-Secondary Educational Institutions, 2011-2014 and 2015-2017

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What are these tariffs?

The tariffs set out royalty rates to be paid when universities and colleges (hereafter “post-secondary institutions”), including their students and staff, make and distribute copies of published literary works, such as books, newspapers, periodicals and journals. The royalty rates cover physical copying, as well as digital copying (e.g., emailing, scanning, and using a digital course management system). Finally, the tariffs set out related terms and conditions associated with the copying activities encompassed by the tariffs. The tariffs cover the period from 2011 to 2017.

What is covered by the tariffs?

The tariffs cover copying activities in post-secondary institutions in Canada, except in the province of Quebec. They are limited to works where Access Copyright has been authorized to manage the relevant copyright on behalf of copyright owners. Access Copyright is a collective society that administers the reproduction right in published literary works for all of Canada, except Quebec. In Quebec, the rights for these activities are managed by a different collective society, Copibec.

What are the royalty rates of the tariffs?

The Copyright Board (the “Board”) has certified royalty rates, as follows:

- \$9.54 per student for colleges, for the years 2011 to 2014
- \$24.80 per student for universities, for the years 2011 to 2014
- \$5.50 per student for colleges, for the years 2015 to 2017
- \$14.31 per student for universities, for the years 2015 to 2017

What is the role of the Copyright Board in setting these tariffs?

The Copyright Board of Canada is an independent, administrative tribunal, created under the *Copyright Act*, that sets fair and equitable royalties to be paid for the use of content protected by copyright, when these rights are managed by a collective society.

As stipulated in the *Copyright Act*, Access Copyright filed proposed tariffs to cover activities from 2011 to 2013, and from 2014 to 2017. Access Copyright's proposed rates in the tariffs were \$45 per student for universities and \$35 per student for colleges for the years 2011 to 2013, and \$35 per student for universities and \$25 per student for colleges for the years 2014 to 2017. At the request of Access Copyright, the Board later consolidated the examination of tariffs for both periods.

The proceedings in this case were complicated by many external factors, generating a near-record number of notices and rulings by the Board. In particular, almost all of the original objectors and intervenors to the tariffs withdrew from the process, including the two main associations representing post-secondary institutions. This meant that the users most directly affected by the tariffs were no longer represented at the proceedings, and did not provide any evidentiary record on which the Board could rely in its assessment. By 2014, only one individual besides Access Copyright was participating in the process.

Given these circumstances, in order to fix fair and equitable royalty rates and related terms and conditions, and to consider the public interest, the Board was required to supplement the record where appropriate, while respecting procedural fairness. This contributed to the length of the proceedings.

What are the royalty rates based on?

The royalty rates in the tariffs are primarily based on two model licences negotiated with the Association of Universities and Colleges Canada (AUCC, now Universities Canada), which formed the basis for agreements that Access Copyright signed with universities – the 2012 AUCC Model Licence, and the 2015 Three-Year AUCC Premium Licence. The Board is satisfied that both agreements are reflective of a functioning market and market price.

However, the Board determined that Access Copyright is not entitled to license copying of works where the copyright owner has not authorized it to do so. Therefore, the model licence rates are adjusted to account for the difference in repertoire between the agreements and the tariffs.

How is “fair dealing” treated under the tariffs?

In its reasons, the Board concludes that the two model licences used as proxies for calculating the tariffs already incorporate a discount for fair dealing. It is therefore unnecessary to conduct a fair dealing analysis for the purposes of setting these tariffs, as they reflect the same discount.

Why do the tariffs apply retroactively?

Access Copyright is entitled by the *Copyright Act* to collect royalties set by a tariff from the date on which the tariff takes effect. That date is determined by the time at which a proposed tariff is filed, not by when the final tariff is approved. Since Access filed its first proposed tariff on March 31, 2010, for an effective date on January 1st, 2011, it is entitled to collect royalties starting in 2011.

If the tariffs only cover up to 2017, what happens for the period of 2018 and later?

Access Copyright has filed proposed tariffs for the periods of 2018-2020 and for 2021-2023. These are currently before the Copyright Board for consideration.

The *Copyright Act* provides that, where an effective period begins before the tariff has been approved by the Copyright Board, a collective society, like Access Copyright, may collect royalties paid by a user in accordance with a previous tariff (in this case, the 2015-2017 approved tariff).