
Note to readers (these notes are not part of the tariff)

This tariff sets the interim royalties payable by any post-secondary educational institution that requires a licence to use the repertoire of Access Copyright. An institution that does not require a licence from Access Copyright is not required to comply with this tariff. An institution does not require such a licence if the institution does not use the repertoire, if the institution has licensed the use of a work through other means or if the *Copyright Act* already authorizes the use being made of the relevant work.

Section 29 gives every institution the option to licence digital copies pursuant to this tariff if it so wishes. The conditions for such a licence are set out in Schedule G. Digital copies made pursuant to section 2(a) attract no additional royalties: the FTE rate remains the same as before. The current rates and terms for coursepacks, licensed pursuant to section 2(b), will also apply to their digital equivalent known as “course collections”.

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

For the reproduction and authorization to reproduce in Canada, in 2011, 2012 and 2013, the works in Access Copyright’s repertoire by post-secondary educational institutions and persons acting under their authority.

SHORT TITLE

This tariff may be cited as the *Access Copyright Interim Post-Secondary Educational Institution Tariff, 2011-2013*.

DEFINITIONS

1. In this Tariff:

(a) “Alternate Format Copy” means an audio, braille, large print (by a reprographic process), or machine readable reproduction of all or part of a Published Work produced for a person who is blind, visually impaired or unable to view normal print because of a disability.

(a.1) “Coursepack” means bound or otherwise packaged or assembled Copies of Published Works from more than one publication.

(b) “Claim” means a written statement or demand in which it is alleged that the Licensee has infringed copyright in any Published Work, including any document commencing legal proceedings.

(c) “Copy” means a visually perceivable reproduction made by any of the following processes:

- (i) any copying by reprographic process which includes facsimile reproduction by photocopying and xerography;
- (ii) duplicating from a stencil;
- (iii) copying onto microform (including microfilm and microfiche);
- (iv) for the sole purpose of making presentations by overhead, slide or LCD projection, digital copying, copying by transcription by hand or drawing (including tracing) onto acetate or other media;
- (v) for the sole purpose of making paper copies,
 - a. typing or word-processing without adaptation, and
 - b. reproduction by a machine or device that makes Electronic Files, subject to sections 2.1 to 2.3 of this Tariff;
- (vi) facsimile transmission and transmission by VideoTelecom; and
- (vii) without limitation to the technology used, digital transmission for the purposes of interlibrary loan.

(c.1) “Electronic File” means each file in digital format created as a result of making Copies pursuant to section 2(a) or 2(b) of this Tariff.

(d) “Exclusions List” means the list of Published Works which is posted on the website of Access Copyright pursuant to section 5 of this Tariff.

(e) “FTE” means, subject to section 17 herein, either

(A) the sum of:

(i) the number of full time Students of the Institution reported by the Institution to Statistics Canada for the academic year immediately preceding the academic year in which the payment is made; and

(ii) the quotient obtained by dividing 3.5 into the number of part-time Students of the Institution, reported by the Institution to Statistics Canada for the academic year immediately preceding the academic year in which payment is made; or

(B) if this information is unavailable or does not exist, any full-time equivalent student for the current academic year as reported to Access Copyright by the Institution.

(f) Omitted.

(f.1) “Institution” means an institution located in Canada (except in the Province of Quebec) that provides post-secondary, continuing, professional, or vocational education or training.

(g) “Library Worker” means any individual including any professional librarian, Student, Professor, volunteer or assistant working in a library which forms part of or is associated with the Licensee.

(h) “Licensee” means the Institution and each employee of the Institution, Student, Professor, Library Worker, volunteer and all other persons authorized or represented by the Institution for the purpose of this Tariff, including each person and body listed in Schedule B to the most recent Agreement between Access Copyright and the Institution.

(i) “Page” means a page of a Published Work.

(j) “Professor” means each professor, researcher, instructor, demonstrator, teaching or research assistant, lecturer or other person who provides instruction to Students and who is affiliated with the Licensee.

(k) “Published Work” means a literary, dramatic or artistic work of which copies have been issued to the public with the consent or acquiescence of the copyright owner in a publication such as a book, folio, magazine, journal, newspaper or other periodical, excluding a musical work.

(l) “Repertoire” means all Published Works for which Access Copyright has the right to grant licences in Canada.

(m) “Reproduction Rights Organization” means an entity that carries on the business of collective administration of reproduction rights in a repertoire of Published Works on behalf of copyright owners, including a “collective society” as defined in the *Copyright Act* R.S.C. 1985 c.C-42, as amended.

(n) “Sampling Survey” means a survey designed to gather bibliographic information and volume data on Copies made pursuant to section 2(a) of this Tariff and conducted in accordance with the sampling protocol last agreed upon between Access Copyright and the Institution or any Association acting on its behalf.

(o) “Student” means each person enrolled in an educational, cultural or recreational activity including distance education or a correspondence course taking place on the premises of, or being administered or operated by, the Institution.

(p) “Textbook” means a book produced primarily for the educational market, and which may include one or more of the following:

- (i) any of the following words in its title: Introduction to; Fundamentals of; Essentials of;
- or

- (ii) reference to an edition, such as 3rd Edition; or
- (iii) pedagogical features, such as exercises, question sets, cases, boxed items, or chapter learning objectives; or
- (iv) an accompanying learning aid such as a study guide, lab manual, teacher guide or solutions sets.

(q) Omitted.

USES AUTHORIZED PURSUANT TO THIS TARIFF

2. This Tariff grants to any Licensee the following rights, subject to the terms and conditions of this Tariff:

(a) the non-exclusive right to make Copies of Published Works for use by Students, Professors and administrative staff of the Licensee and for use in interlibrary loan to other non-profit educational institutions and non-profit libraries, archives, and museums subject to the additional terms and conditions set forth in Schedule C to this Tariff.

(b) the non-exclusive right to make Copies of Published Works for sale to and use by Students, Professors and administrative staff of the Licensee, and for distribution to students enrolled in Distance Education, subject to the additional terms and conditions set forth in Schedule D to this Tariff.

(c) omitted.

(d) the non-exclusive right to make a single Copy of all or a part of any rare or fragile copy of a Published Work held by a library which forms part of or is associated with the Institution or any entity listed in Schedule B to the most recent Agreement between Access Copyright and the Institution for the purpose of preventing deterioration of such copy and for use by Students, Professors, and administrative staff of the Institution.

(e) the non-exclusive right to make a single Copy of not more than 20% of a Published Work to replace any damaged or missing pages of the work in the collection of a library which forms part of or is associated with the Institution or any entity listed in Schedule B to the most recent Agreement between Access Copyright and the Institution.

(f) the non-exclusive right to make Alternate Format Copies of Published Works for use by Students, Professors and administrative staff of the Licensee who require Alternate Format Copies and those involved in assisting such persons, subject to the additional terms and conditions set forth in Schedule F to this Tariff.

2.1 Input or output of Published Works (without adaptation) into or from an Electronic File by computer or word processor shall only be permitted under this Tariff in amounts authorized and

according to all other terms and conditions of this Tariff for the purpose of producing paper copies:

(a) except for Copies made under section 2(b), paper Copies shall be produced immediately after the Electronic File has been created and the Electronic File shall be promptly destroyed;

(b) for Copies made under section 2(b), Electronic Files may be retained for a period not exceeding three years as long as records are maintained in accordance with section 13.1 and the Electronic Files are not distributed to or used by other institutions.

In any event, all Electronic Files shall be destroyed forthwith if the Institution ceases to avail itself of this Tariff.

2.2 With the exception of digital transmission for the purposes of interlibrary loan permitted by this Tariff, nothing in this Tariff authorizes the dissemination or distribution of any such Electronic File in any electronic form in any way whatsoever, including but not limited to, on disk or over a computer network.

2.3 (a) Copies made under this Tariff must be faithful and accurate reproductions of the Published Work and must not alter, manipulate, annotate, include comments, edit, amend or rearrange the content or appearance of all or part of the Published Work in any way.

(a.1) Notwithstanding section 2.3(a), annotations or comments may be made on the page that follows the page on which appears a reproduction of an extract of a Published Work made in accordance with the terms of this Tariff.

(b) Notwithstanding section 2.3(a), for Copies made:

(i) under section 2.1 of this Tariff for the purpose of producing paper Copies, making an Electronic File may involve any of the following activities:

(A) rotating the image orientation of the Published Work from landscape to portrait, or vice versa; or

(B) copying only a portion of the Page, provided that the copyright attribution as required by Schedule D, section 9 of this Tariff includes a credit to both the author and publisher of the portion copied, as well as to the author and publisher of the Page from which the portion was copied;

(ii) under section 2.1 of this Tariff but only for the specific purpose of producing Alternate Format Copies under section 2(f) of this Tariff, making an Electronic File may involve any of the following activities:

(A) rotating the image orientation of the Published Work from landscape to

portrait, or vice versa; or

(B) copying only a portion of the Page, provided that the copyright attribution as required by Schedule D, section 9 of this Tariff includes a credit to both the author and publisher of the portion copied, as well as to the author and publisher of the Page from which the portion was copied; or

(C) increasing or decreasing the font size of the Published Work to a reasonable degree, provided that the font itself is not changed;

all provided that, in so doing, the Licensee shall not infringe the moral right of integrity held by the author of the Published Work.

3. This Tariff does not cover:

(a) works in which copyright no longer subsists in Canada;

(b) works for which copyright is owned by the Institution;

(b.1) anything that is excepted from copyright infringement pursuant to the provisions of the *Copyright Act* and any amendments thereto that may be enacted before or after the date of this Tariff but only from the effective date of such enactment;

(c) any fair dealing with any work for the purposes of private study, research, criticism, review or newspaper summary;

(d) works listed on the Exclusions List;

(e) unpublished works;

(f) all works published by Her Majesty in Right of Canada or any Province or any Territory other than the Province of Quebec or works for which Her Majesty the Queen in right of Canada or any Province or Territory other than the Province of Quebec holds copyright;

(g) works for which the Licensee has first sought permission to make the Copies from the person who has the right to grant that permission, regardless of whether or on what terms that permission is granted, unless that person advises the Licensee that it has authorized Access Copyright (or a collective with which Access Copyright has a reciprocal agreement) to grant permissions on its behalf;

(h) introductory quotations of short passages of Published Works;

(i) originals of artistic works;

- (j) photographic negatives or other transparencies (positives) mounted or unmounted; and
- (k) publications containing a notice which expressly prohibits reproduction under the authorization of a licence from a Reproduction Rights Organization;

nor does this Tariff cover, unless such works contain a notice which specifically authorizes copying under a licence with Access Copyright or any Reproduction Rights Organization represented by Access Copyright, any of the following works:

- (l) published workbooks, work cards, assignment sheets, tests, examination papers, and any other Published Works intended to be “consumable”;
- (m) instruction manuals including teachers’ guides;
- (n) publications containing commercially valuable proprietary information, such as newsletters, with restricted circulation or that indicate use is restricted to fee-paying clientele;
- (o) omitted;
- (p) letters to the editor and advertisements in newspapers, magazines or periodicals; and
- (q) business cases which are available for purchase.

If the Licensee seeks to obtain permission to make Copies of works from a person referred to in section 3(g) of this Tariff, such Copies shall not be made or reported pursuant to this Tariff.

4. Omitted.

5. (1) Forthwith upon this Tariff being issued, and in any event no later than on January 7, 2011, Access Copyright shall post on its website the Exclusions List it supplied to the Copyright Board on December 15, 2010. That list shall be in secured, searchable and printable PDF format. Access Copyright shall prominently post a hyperlink to this document on its Home page.

(2) Semi-annually from the commencement of this Tariff, that is, no later than February 1 and September 1 of each year during the term of this Tariff, Access Copyright may add Published Works to, or delete Published Works from, the Exclusions List by issuing a notice of change to the Exclusions List, which notice shall specify such addition or deletion. Such additions or deletions shall take effect 60 days from the date of giving of such notice of change. The Licensee shall be entitled to use, offer for sale, sell or distribute all Copies of any Published Work made prior to the effective date of the listing of the work on the Exclusions List. In addition to the foregoing, Access Copyright will use reasonable efforts to advise the Institution of any additions to the Exclusions List that have been notified to Access Copyright since the previous February 1 or September 1. Any such additions shall only take effect under this Tariff if such additions are included in a notice of change issued pursuant to this section.

(3) Access Copyright shall send any notice issued pursuant to section 5(2) of this Tariff to the Board and post it on its website.

6. The Licensee shall not copy onto acetate or any similar transparent material or for mounting as a slide any work of a fine art if a slide of the work is available on the Canadian market within a reasonable time frame and for a reasonable price and that may be located with reasonable effort.

7. The Licensee shall only make Copies pursuant to sections 2(a), (b), (d), (e) and (f) of this Tariff for the purpose of education or recreation associated with the Institution, including professional, research, archival and administrative activities. For greater certainty, the parties agree that no Copies may be made pursuant to this Tariff for use in association with partisan political activities, endorsement, or advertising of a product, service, cause or institution where the nature of the material to be copied and the proposed use would prejudice the author's honour or reputation.

GENERAL OBLIGATIONS ON THE INSTITUTION

8. The Institution shall not sell Copies made pursuant to this Tariff except for:

(a) Copies made for interlibrary loan pursuant to section 2(a) and Copies made pursuant to section 2(b) of this Tariff, which may only be sold for an amount which does not exceed the cost of making such Copies, an amount to cover royalties payable to Access Copyright in respect of making such Copies, and administrative overhead costs;

(b) Omitted.

9. The Institution shall use reasonable efforts to inform Professors, Students, Library Workers, and its administrative employees of the general terms of this Tariff with respect to the making or use of Copies, the purposes for which copying is authorized, the restrictions on sale of Copies and, where appropriate, record keeping, to facilitate and encourage compliance with such terms.

10. If or when the Institution distributes or disseminates to Library Workers, Professors, Students and all other persons authorized or represented by the Institution information that refers to Access Copyright by its corporate name "The Canadian Copyright Licensing Agency" or its trade-mark "CANCOPY" or "Access Copyright", or both, for the purpose of providing information on the making or ordering of Copies under this Tariff, the Institution shall give to Access Copyright notice pursuant to this section in advance of such distribution, which notice shall enclose a copy of such material, to enable Access Copyright to have a reasonable opportunity to comment on the material if it so chooses. If Access Copyright fails to notify the Institution of any objection that it may have with respect to the material within 10 days of receipt of such notice, Access Copyright shall be deemed to have agreed to the form and content of the material and the use of the material for the purposes specified in section 9 of this Tariff.

10.1 The Institution shall affix Access Copyright posters giving information about the terms and

conditions of copying permitted under this Tariff within the immediate vicinity of each machine or device used for making Copies in a place and manner that is readily visible and legible to persons using such machine or device. The content of such posters shall be either that on which Access Copyright and the Institution agree or that of the most recent poster affixed by the Institution on or before December 24, 2010. Posters shall be provided to the Institution by Access Copyright and at Access Copyright's cost.

RECORD KEEPING

11. Subject to the provisions of section 12 of this Tariff, the Institution shall not be obliged to establish or maintain any records with respect to Copies made pursuant to the licence granted under section 2(a) of this Tariff.

11.1 Any records that the Institution shall be obliged to maintain and provide under sections 12 to 13.1 of this Tariff shall be maintained in electronic form. In the event that the Institution is unable to maintain such records in electronic form or Access Copyright is unable to access or process such records in the electronic form adopted by the Institution, the parties shall negotiate a mutually acceptable alternative form of record keeping.

12. The Institution shall establish and maintain records of all microforms including microfiches and microfilms, and Alternate Format Copies made by the Licensee pursuant to this Tariff which records shall specify, for each of such reproductions made, the title, publisher, author or authors (where known), the ISBN/ISSN number (where known), material onto which such reproductions were made, the total number and page numbers of the Pages reproduced, and, where reasonably available, the total number of Pages in the publication from which the Copies are directly made. The Institution shall submit, together with each payment made under section 15.1 or 16 of this Tariff, copies of such records to Access Copyright covering the period for which such payment is being made.

13. The Institution shall establish and maintain records of all Copies made by the Licensee pursuant to section 2(b) of this Tariff which records shall specify, for each of such Copies made, the title, publisher, author or authors (where known), the ISBN/ISSN number (where known), material onto which such Copies were made and the total number and page numbers of the Pages reproduced, and, where reasonably available, the total number of Pages in the publication from which the Copies are directly made. In addition, the Institution shall establish and maintain records of the total number of Copies made by the Licensee. The Institution shall submit, together with each payment made under section 15.1 or 16 of this Tariff, copies of such records to Access Copyright covering the period for which such payment is being made.

13.1 The Institution shall establish and maintain records of all Electronic Files made by the Licensee pursuant to section 2(b) of this Tariff and retained for more than one trimester, which records shall specify, for each Electronic File, the date such file was originally created, the title, publisher, author or authors (where known), the ISBN/ISSN number (where known) and the total number and page numbers of the Pages reproduced, as well as the dates of such reproductions and, where reasonably available, the total number of Pages in the publication from which the

Copies were made. The Institution shall submit copies of such records to Access Copyright within 60 days of August 31 covering the previous 12 months.

ROYALTIES

14. An Institution shall pay to Access Copyright:

(a) For all copies made pursuant to section 2(a) of this Tariff, an annual royalty calculated by multiplying the FTE by \$3.58 for Institutions that signed the Proprietary College Licence, and by \$3.38 for all other Institutions;

(b) Subject to the provisions of sections 14(c) and (d) of this Tariff, \$0.10 (\$0.11 for Institutions that signed the Proprietary College Licence) for each Page or printed sheet copied pursuant to section 2(b) of this Tariff (including each Page copied onto paper from microform) and reported under section 13 herein;

(c) For out of print works copied pursuant to this Tariff, the maximum amount the Institution shall pay to Access Copyright for each Copy of the entire out of print work is \$10.00;

(d) For each Page or printed sheet of newspaper copied pursuant to this Tariff (including each Page copied onto paper from microform), the Institution shall pay to Access Copyright fifty percent of the amount that, but for this section 14 (d), the Institution would have had to pay to Access Copyright pursuant to section 14 (b) of this Tariff;

(e) Omitted;

(f) Omitted;

(g) Omitted.

15. Omitted.

15.1 The Institution shall remit the amounts payable pursuant to section 14 herein and report the information relevant thereto according to the timetable most recently agreed to between Access Copyright and the Institution. If no such agreement exists, payment shall be made and reports shall be provided pursuant to section 16.

16. (a) The Institution to which section 15.1 does not apply shall remit the total amount payable pursuant to section 14 (a) herein within 60 days of September 30 of each year during the term of this Tariff;

(a.1) Omitted.

(b) That Institution shall remit to Access Copyright within 60 days of August 31 of each

year during the term of this Tariff the total amount payable for the immediately preceding period of September 1 through August 31 of each year during the term of this Tariff calculated pursuant to sections 14 (b) through (d) of this Tariff;

(c) Together with each payment made pursuant to section 16(b) of this Tariff, including the first, that Institution shall submit to Access Copyright a detailed statement in such form agreed upon between Access Copyright and the Institution showing the data upon which such payment is based.

16.1 Notwithstanding anything in this Tariff, any amount that would have been payable before December 31, 2010 for a period starting on January 1, 2011 or thereafter shall be paid by no later than February 28, 2011.

17. (a) The Institution shall notify Access Copyright of the number of its FTE students by no later than November 30 of each year during the term of this Tariff; and

(b) Should an Institution fail to provide notice of its FTE to Access Copyright by the time it is required to provide payment as set out in section 15.1 or 16 herein, Access Copyright shall be entitled to receive the amount payable pursuant to sections 14(a), 15.1 and 16 herein on the date such payments are due based on the Institution's FTE for the preceding year. In the event that the Institution's FTE is greater than the FTE upon which payments were based in accordance with this section 17, Access Copyright shall be entitled to the difference plus interest in respect of the difference as provided for in section 18.

18. Late payments shall be subject to interest charges from the due date, calculated at a rate equal to the prime rate of the Bank of Nova Scotia (as it exists on January 1 of the year in which the payment was due) plus one per cent per annum, compounded monthly.

19. The Institution shall pay to Access Copyright as may be required by law any sums in respect of any applicable taxes levied on the Institution by government in respect of the copying, calculated at the rate of taxation then in force.

AUDIT AND SAMPLING

20. To verify the accuracy of payments made pursuant to sections 14(a) through (d) of this Tariff, and not more than once within each calendar year, Access Copyright shall have the right, at any reasonable time during business hours and upon 21 days written notice to the Institution, by an independent chartered accountant (or accountant of similar standing) approved in writing by the Institution, which approval shall not be unreasonably withheld, to inspect and audit the obligations of the Institution pursuant to this Tariff and accounts and records of the Institution relating to the number of Copies made pursuant to this Tariff and the calculation of the payments due under this Tariff. The costs of such inspection and audit shall be borne by Access Copyright.

21. Access Copyright shall keep all information obtained as a result of any inspection or audit referred to in section 20 of this Tariff confidential to itself and to its professional advisors and

shall not use such information for any commercial purposes other than to verify the accuracy of the payments and compliance with the terms of copying.

22. In the event that any inspection and audit referred to in section 20 of this Tariff shall reveal an error between the amount paid by the Institution pursuant to this Tariff and the amount actually due in respect of the period for which such inspection and audit shall have been made, any such error shall, if an underpayment by the Institution, be made good within 30 days of receipt of notice of such error from Access Copyright. If such an inspection and audit reveals an error of more than 10% of the amount owed for that period, then the Institution shall reimburse Access Copyright for its costs of such inspection and audit. The Institution shall be held liable for audit costs relating to adequacy of payment only and not its general obligations. In the event that any inspection and audit referred to in section 20 of this Tariff shall reveal an error between the amount paid by the Institution pursuant to this Tariff and the amount actually due in respect of the period for which such inspection and audit shall have been made, any such error shall, if an overpayment by the Institution, be reimbursed within 30 days of notice of such overpayment by the Institution.

22.1 Access Copyright may conduct a Sampling Survey. The Sampling Survey is designed to gather bibliographic information and volume data on Copies made pursuant to section 2(a) of this Tariff.

22.2 Access Copyright has the right to conduct a Sampling Survey of Copies made pursuant to section 2(a) of this Tariff upon reasonable notice and no more than once each calendar year during the term of this Tariff. The costs, reasonably incurred, of carrying out such a Sampling Survey, shall be borne by Access Copyright. In particular, at the request of the Institution, Access Copyright shall provide and/or train staff required to undertake the Sampling Survey.

22.3 Access Copyright shall refrain from using any information obtained as a result of the conduct of the Sampling Survey for any purpose other than to assist it in making distribution of the Institution's payments to copyright owners including to its affiliates. In particular, Access Copyright shall not use any of such information in an attempt to justify the increase in future of the amount payable for such a licence and shall not disclose any of such information to the Copyright Board, a court, an arbitrator or a mediator for any purpose *whatsoever*.

INDEMNIFICATION

23. Access Copyright shall indemnify and save the Licensee harmless from any costs, expenses and damages relating to any Claim against the Licensee whatsoever and howsoever arising from the exercise of rights under this Tariff, with the exception of any claim based on an alleged infringement of moral rights or by Access Copyright, provided that:

- (a) the Institution shall have furnished to Access Copyright notice of any such Claim within 10 days of receipt of actual notice by the individual nominated by the Institution for the purpose of receiving notice pursuant to section 27 of this Tariff or within 10 days from the date of service on the Institution of any document commencing legal

proceedings in respect to any such Claim; and

(b) the Licensee shall not have been in breach of the terms of this Tariff with respect to the making or use of any Copies upon which such Claim is based.

Breach of the terms of this Tariff by a Licensee other than the Institution shall not deprive the Institution of the benefit of this indemnity.

Notwithstanding the foregoing:

(c) Access Copyright shall have no obligation to indemnify the Licensee or the Institution if a person authorized or represented by the Institution fails to advise the Institution or Access Copyright of a Claim within a reasonable period and thereby prejudices Access Copyright's ability to deal with such Claim effectively.

24. If Access Copyright is obliged to indemnify the Institution pursuant to section 23 of this Tariff in respect of the making or use of any Copies by any Professor, Student or member of its administrative staff otherwise than in accordance with the terms of copying set out in one or more of Schedules C, D or F to this Tariff, at the request of Access Copyright, the Institution shall cooperate with Access Copyright in pursuing any Claim for compensation in respect of the making or use of such Copies that Access Copyright or the Institution may have against the Professor or Student or member of its administrative staff. If Access Copyright requires the Institution to so co-operate, Access Copyright shall indemnify and save the Institution harmless from all costs and expenses whatsoever and howsoever arising that the Institution may incur relating to such cooperation.

25. Access Copyright shall assume the responsibility for the conduct of any legal proceedings arising from any Claim made against the Licensee immediately upon receipt of notice of any such claim pursuant to section 23 of this Tariff. The Institution shall ensure that no admission or offer of payment or indemnity shall be made or given on its behalf or on behalf of Access Copyright and without Access Copyright's prior written consent, and, at the request of Access Copyright, shall use reasonable efforts to advise an alleged infringer not to make any admission or offer of payment or indemnity without Access Copyright's prior written consent, provided the Institution has a current address for such person. Should the Institution settle any Claim without such consent, the Institution shall be deemed to have waived the indemnity referred to in section 24 of this Tariff in respect of such Claim. Should any other alleged infringer authorized or represented by the Institution settle any Claim without such consent, Access Copyright will have no obligation to indemnify such person. Access Copyright will notify the Licensee of the details of any Claim settled under the terms of this section, within 30 days of settlement.

26. The Institution shall cooperate in the disposition of any Claim in such ways as Access Copyright may reasonably require. If Access Copyright requires the Institution to so cooperate, Access Copyright shall indemnify and save the Institution harmless from all costs and expenses whatsoever and howsoever arising that the Institution may incur relating to such cooperation.

ADDRESSES FOR NOTICES AND PAYMENT

27. (1) Anything that an Institution sends to Access Copyright shall be sent to:

Executive Director, Access Copyright
The Canadian Copyright Licensing Agency
One Yonge Street, Suite 800, Toronto, Ontario, M5E 1E5
Telephone: (416) 868-1620
Fax: (416) 868-1621
Email: tariffs@accesscopyright.ca

(2) Anything that Access Copyright sends to an Institution shall be sent to the last address of which Access Copyright has been notified in writing.

DELIVERY OF NOTICES AND PAYMENT

28. (1) A notice may be delivered by hand, by postage paid mail, by fax or email. A payment may be delivered by hand, by postage paid mail or by electronic bank transfer.

(2) Anything mailed in Canada shall be presumed to have been received three (3) business days after the day it was mailed.

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

DIGITAL COPIES

29. (1) An Institution can elect to licence Digital Copies pursuant to Schedule G.

(2) An election must be in writing, and must be received by Access Copyright at least 30 days before it is to take effect.

(3) An election is valid for six months starting on either January 1 or July 1 of any given year. It is automatically renewed for a further period of six months unless Access Copyright is advised at least 30 days before the end of the election period that the Institution no longer wishes to avail itself of Schedule G.

(4) Notwithstanding section 29(2), the election for January 1, 2011 can be made no later than on January 14, 2011.

Clauses 27 to 40 of the Model Licence are omitted.

Schedule A – Omitted

Schedule B – Omitted

Schedule C – Terms of Copying (Section 2(a) of the Tariff)

1. All Copies shall be made onto paper except for Copies made onto acetate or similar transparent material, slides, microfiche and microfilm. Copies made onto slides, microfiche and microfilm shall only be made in accordance with the additional terms and conditions of this Tariff. For interlibrary loan transmission, a Library Worker who sends a Copy in an Electronic File to an institution entitled to receive such Copy should advise the institution that the Electronic File may only be used to make a paper Copy for the individual who requested the Copy and that the Electronic File should thereafter be promptly destroyed. The Library Worker should thereafter promptly destroy the Library Worker's Electronic File.

2. Except as otherwise specifically provided in the Tariff, no copying shall exceed 10% of a Published Work or the following, whichever is greater:

- (a) an entire newspaper article or a page;
- (b) an entire single short story, play, poem, essay or article from a book or periodical issue (including a set of conference proceedings) containing other works;
- (c) an entire single item of print music from a book or periodical issue containing other kinds of work;
- (d) an entire entry from an encyclopedia, dictionary, annotated bibliography or similar reference work;
- (e) an entire reproduction of an artistic work (including drawing, sculpture, painting, prints, architectural works of art or works of artistic craftsmanship) from a book or periodical issue containing other works;
- (f) one chapter, provided it is no more than 20% of a book.

Access Copyright shall use reasonable efforts to clear requests to copy in excess of these limits. It is understood that such clearances may be subject to additional payment of royalties. In these cases, royalties will be calculated using the tariff for Copies made pursuant to section 2(b) of this Tariff.

3. Access Copyright shall use reasonable efforts to clear requests to copy works published in excluded countries or by excluded publishers and excluded works. It is understood that such clearances may be subject to additional payment of royalties, calculated using the tariff for Copies made pursuant to section 2(b) or any other tariff set by the rights holder.

4. The Institution shall only make a sufficient number of Copies to provide one for each Student, two for each Professor and such number required by the Institution for administrative purposes.

5. The Institution shall not make any Copies of any Published Work which to the knowledge of

the Institution or the person doing the copying or ordering the Copies is commercially available as a separate publication at a reasonable price and within a reasonable period of time.

6. The Institution shall not engage in systematic, cumulative copying of the same Published Work for a single course or program in one academic year beyond the limits set out in section 2 of this Schedule.

7. The Institution shall not assemble any Copies of Published Works into a Coursepack.

8. The Institution shall include on at least one page of all multiple Copies made pursuant to section 2(a) of this Tariff for the purpose of distribution to Students and on all Copies made pursuant to section 2(a) of this Tariff for the purpose of interlibrary loan, the international copyright symbol ©, a credit to the publisher, the artist or illustrator of any artistic work reproduced (where known) and the author or authors (where known) and, when possible, shall display the following prominent notice:

“This material has been copied under licence from Access Copyright. Resale or further copying of this material is strictly prohibited.”

Schedule D – Terms of Copying (Section 2(b) of the Tariff)

1. All Copies shall be made onto paper except for Copies made onto slides, microfiche and microfilm. Copies made onto slides, microfiche and microfilm shall only be made in accordance with the additional terms and conditions of this Tariff.

2. Except as otherwise specifically provided in this Tariff, no copying shall exceed 15% of a Published Work or the following, whichever is greater:

(a) an entire newspaper article or a page;

(b) an entire single short story, play, poem, essay or article from a book or periodical issue (including a set of conference proceedings) containing other works;

(c) an entire single item of print music from a book or periodical issue containing other kinds of work;

(d) an entire entry from an encyclopedia, dictionary, annotated bibliography or similar reference work;

(e) an entire reproduction of an artistic work (including drawing, sculpture, painting, prints, architectural works of art or works of artistic craftsmanship) from a book or periodical issue containing other works;

(f) one chapter, provided it is no more than 20% of a book.

Access Copyright shall use reasonable efforts to clear requests to copy in excess of these limits.

3. At the discretion of Access Copyright, and with its prior written consent, up to the whole of a work which is out of print in all editions may be copied.

4. Access Copyright shall use reasonable efforts to clear requests to copy works published in excluded countries or by excluded publishers and excluded works. It is understood that such clearances may be subject to a different tariff than for other copies governed by this Schedule, as required by the rights holder.

5. The Institution shall only make a sufficient number of Copies to provide one for each Student, two for each Professor and such number required by the Institution for administrative purposes.

5.1 The Institution shall establish and maintain records of all Electronic Files made pursuant to section 2(b) and retained by the Licensee pursuant to section 2.1(b) of this Tariff and shall submit such records to Access Copyright annually, in accordance with section 13.1 of this Tariff.

6. The Institution shall not make any Copies of any Published Work which to the knowledge of the Institution or the person doing the copying or ordering the Copies is commercially available

as a separate publication at a reasonable price and within a reasonable period of time.

7. The Institution shall not engage in systematic, cumulative copying of the same Published Work for a single course or program in one academic year beyond the limits set out in section 2 of this Schedule.

8. If a Coursepack made pursuant to this Tariff includes extracts from Textbooks, the following limitations apply:

(a) a maximum of 5% of a Textbook may be reproduced, but in any case no more than one chapter;

(b) a Coursepack may contain up to two such extracts written by the same author and published by the same publisher, within any five year period; and

(c) up to 50% of the pages in a Coursepack can be reproduced from Textbooks.

9. The Institution shall include on at least one page of all Copies made pursuant to section 2(b) of this Tariff the international copyright symbol ©, a credit to the publisher, the artist or illustrator of any artistic work reproduced (where known) and the author or authors (where known) and shall display the following prominent notice:

“This material has been copied under licence from Access Copyright. Resale or further copying of this material is strictly prohibited.”

Schedule E – Omitted

Schedule F – Terms of Copying (Section 2(f) of the Tariff)
Alternate Format Copies

1. The Institution shall include on all Alternate Format Copies made pursuant to section 2(f) of this Tariff the international copyright symbol ©, a credit to the publisher and the author or authors (where known) and shall display the following prominent notice:

“This material is reproduced in alternate format under licence from Access Copyright.
Resale or further copying of this material is strictly prohibited.”

2. The Institution shall not make any Alternate Format Copies of any Published Work where to the knowledge of the Institution such a Copy is commercially available as a separate publication at a reasonable price and within a reasonable period of time.

3. On request, and if available, the Institution shall provide a Copy of any Alternate Format Copy made by it pursuant to this Tariff to Access Copyright, on behalf of the owner of copyright.

Schedule G – Additional Provisions Dealing with Digital Copies (Section 29 of the Tariff)

1. This Schedule applies to Digital Copies made pursuant to this tariff. It does not apply to copies (or uses therefore) of Repertoire Works for which an Institution does not require a licence from Access Copyright.

2. In this Schedule,

“Copy” means any Digital Copy that is made by or as a consequence of any of the following activities, in so far as they are protected by copyright:

- (a) scanning a paper copy;
- (b) transmission by electronic mail;
- (c) transmission by facsimile;
- (d) storage of a Digital Copy on a local storage device or medium;
- (e) posting or uploading a Digital Copy to a Secure Network or storing a Digital Copy on a Secure Network;
- (f) transmitting a Digital Copy from a Secure Network and storing it on a local storage device or medium;
- (g) projecting an image using a computer or other device;
- (h) displaying a Digital Copy on a computer or other device; and
- (i) posting a link or hyperlink to a Digital Copy.

“Course Collection” means, for use by an Licensee as part of a Course of Study, and whether for required or recommended reading for the Course of Study or otherwise, Digital Copies of Published Works that are:

- (i) emailed, linked or hyperlinked to; or
- (ii) posted, uploaded to, or stored, on a Secure Network.

“Course of Study” means a course or unit of academic, continuing, professional, or vocational study administered or hosted by the Institution.

“Digital Copy” means a reproduction in any digital form including optical or electronic format.

“Secure Network” means a network that is operated by the Institution, or for the Institution with

Access Copyright's consent, and which is only accessible by a Licensee who is approved by the Institution by means of a process of authentication which, at the time of login, identifies the user as a Licensee, whether by user name and password or by some other equally secure method.

3. (1) Digital Copies made pursuant to this Tariff shall not be transmitted to, made available from, posted or uploaded to, or stored on, any computer network other than a Secure Network.

(2) Digital Copies made pursuant to this Tariff stored on Secure Networks shall be segregated by individual Course of Study and made available and accessible only to Licensees.

(3) Digital Copies made pursuant to this Tariff shall not be transmitted to, made available from, posted or uploaded to, or stored, on any device or medium, computer or computer network in such a manner that makes them publicly available or accessible including available or accessible over the Internet or other public network.

(4) Where the Institution is no longer covered by this interim tariff, the Institution and all Licensees shall immediately cease to use all Digital Copies made pursuant to this Tariff, delete from their hard drives, servers and networks, and make reasonable efforts to delete from any other device or medium capable of storing Digital Copies, those Digital Copies and upon written request from Access Copyright shall certify that it has done so.

(5) Nothing in this interim tariff authorizes any person to descramble a scrambled work or decrypt an encrypted work or to otherwise avoid, bypass, remove, deactivate, impair, or otherwise circumvent a technological measure that restricts or controls access to, copying of, retention of, distribution, or transmission of a work licensed pursuant to this Schedule.

4. (1) Sections 23 to 26 of this Tariff do not apply to Digital Copies.

(2) Subject to the provisions of this Schedule, all other provisions of this tariff and its other Schedules applicable to Coursepacks, including section 14(b) of this Tariff, are applicable, with such modifications as necessary, to Digital Copies made for the purposes of Course Collections.