

Copyright Board
Canada



Commission du droit d'auteur
Canada

November 7, 2019

In accordance with section 68.2 of the *Copyright Act*, the Copyright Board hereby publishes the following proposed tariff:

- Access Copyright Post-Secondary Educational Institution Tariff, 2021-2023

By that same section, the Copyright Board hereby gives notice to any person affected by this proposed tariff that users or their representatives who wish to object to this proposed tariff may file written objections with the Board, at the address indicated below, no later than the 30th day after the day on which the Board published the proposed tariff under paragraph 68.2(a), that is no later than **December 9, 2019**.

Lara Taylor
Secretary General
Copyright Board Canada
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Ottawa, Ontario K1P 5A9
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PROPOSED TARIFF

Filed with the Copyright Board pursuant to subsection 67(1) of the *Copyright Act*

2019-10-15

THE CANADIAN COPYRIGHT LICENSING AGENCY (ACCESS COPYRIGHT)

Access Copyright Post-Secondary Educational Institution Tariff, 2021-2023

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

2021-01-01 – 2023-12-31

Proposed citation:

Access Copyright Post-Secondary Educational Institution Tariff, 2021-2023

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

For the reproduction, communication to the public by telecommunication or making available to the public by telecommunication, in any form or by any method or process whatsoever, or the authorization of any such act, in Canada, in 2021 to 2023, of works in the repertoire of Access Copyright for the purposes of post-secondary education.

1. Short Title

This tariff may be cited as the *Access Copyright Post-Secondary Educational Institution Tariff, 2021-2023*.

2. Definitions

In this tariff,

“*Academic Year*” means the 12-month period from September 1 to August 31. (« *Année scolaire* »)

“*Authorized Person*” means

- (a) a Student; or
- (b) a Staff Member. (« *Personne autorisée* »)

“*Authorized Purposes*” means all purposes within or in support of the mandate of the Educational Institution. (« *Fins autorisées* »)

“*Copy and/or Communicate*” means any reproduction, communication to the public by telecommunication or making available to the public by telecommunication, in any form or by any method or process whatsoever, or authorizing any such act, including one that is made by, as a consequence of, or for the purpose of the following activities:

- (a) photocopying, printing and xerography;
- (b) reproducing onto microform (including microfilm and microfiche);
- (c) reproducing by
 - a. typing or word-processing without adaptation,
 - b. hand transcription or drawing (including tracing) onto acetate or other media, and
 - c. duplicating from a stencil;
- (d) reproducing by a machine, device or computer that makes a Digital Copy, including scanning;
- (e) transmitting a Published Work by any means or process including by SMS (short message service), text, electronic mail or facsimile;
- (f) copying onto or storing on a storage device or medium, including onto a computer, USB (universal serial bus), tablet or other mobile device;
- (g) providing access to a work including by posting, uploading, copying onto or storing on a Secure Network;
- (h) transmitting or downloading from a Secure Network and copying onto or storing on a storage device or medium, including onto a computer, USB, tablet or other mobile device;
- (i) projecting an image using a medium or device, including a computer, tablet or other mobile device; or
- (j) displaying on a medium or device, including a computer, tablet or other mobile device.

(« *Copie ou communiquer* »)

“*Copying*” means making a Copy. (« *Copier* »)

“*Course Collection*” means copies of Published Works in the Repertoire assembled into paper course packs or into digital course packs or Published Works in the Repertoire posted, uploaded, or stored on a Secure Network and made available to Authorized Persons. (« *Recueil 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. Each section of the same course is a separate Course of Study. (« *cours* »)

“*Digital Copy*” means a reproduction of a Published Work in any digital form including on a medium or device, tangible or not, using information technologies be they electronic, magnetic, optical, wireless or other, or a combination of technologies. (« *Copie numérique* »)

“*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 for any given Academic Year. (« *Date de détermination de l’ETP* »)

“*Musical Work*” means any work of music or musical composition, with or without words, and includes any compilation thereof. (« *Œuvre musicale* »)

“*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*” includes all Published Works by any author or publisher, estate of an author or publisher or other person with a copyright interest in a given Published Work who, by assignment, grant of licence or by appointment as an agent or otherwise, has authorized Access Copyright to collectively administer the reproduction right, the communication to the public by telecommunication or making available to the public by telecommunication right in and to that Published Work, and/or all Published Works authorized by another collective management organization. (« *Œuvre du répertoire* »)

“*Secure Network*” means an electronic network, Internet or other digital network, learning management system or cloud-based storage service that is operated by the Educational Institution, or for and subject to the control of the Educational Institution, and which 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 an 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 post-graduate 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 above positions;
- (k) any other person in an essentially comparable position to 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* »)

“*Subcontractor*” has the meaning set out in section 10. (« *Sous-traitant* »)

“*University*” means an Educational Institution that

- (a) is specifically recognized as a “university” under Canadian law;
 - (b) is accepted as a member institution of Universities Canada;
 - (c) is accredited as a university by a recognized accreditation body; or
 - (d) has 50 percent or more of its Students enrolled in degree programs requiring three or more years of full-time study.
- (« *Université* »)

“*Year*” means a calendar year. (« *Année* »)

Application

3. Subject to compliance with each of the conditions in sections 4 and 5, this tariff entitles an Authorized Person for Authorized Purposes only, including for use in a Course Collection, to

- (a) make a Copy and/or Communicate of up to twenty per cent (20%) of a Repertoire Work; or
- (b) make a Copy and/or Communicate a Repertoire Work that is
 - (i) an entire newspaper or periodical article or page,
 - (ii) a single short story, play, poem, essay or article,
 - (iii) an entire entry from an encyclopaedia, annotated bibliography, dictionary or similar reference work,
 - (iv) an entire reproduction of an artistic work (including a drawing, painting, print, photograph and reproduction of a work of sculpture, an architectural work of art and a work of artistic craftsmanship), and
 - (v) one chapter, provided it is no more than twenty-five per cent (25%) of a book.

General Conditions Applicable to all Repertoire Works

4. (1) No Copies and/or Communications of Repertoire Works shall be made available, distributed, or transmitted to a person who is not an Authorized Person.

(2) There shall be no repeated, systematic or cumulative Copying and/or Communicating of the same Repertoire Work beyond the limits set out in section 3 for one Course of Study in one Academic Year.

(3) Copies of Repertoire Works shall not be stored or indexed with the intention or result of creating a library of Published Works.

(4) Copies and/or Communications shall only be made from Repertoire Works that are lawfully obtained by the Authorized Person making the Copies and/or Communications, but without violating any licensing or other contractual terms with any person which prohibit such Copying and/or Communicating under a collective licence.

(5) Copies and/or Communications of Repertoire Works shall be faithful and accurate reproductions of the Repertoire Works.

(6) Copies and/or Communications of Repertoire Works shall not be made or used in a manner that would infringe the moral rights of any author.

Additional Conditions Regarding Digital Copies of Repertoire Works

5. (1) Digital Copies of Repertoire Works 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 of Repertoire Works stored on Secure Networks shall be segregated by individual Course of Study and made available and accessible only to Authorized Persons.

(3) Digital Copies of Repertoire Works 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) Nothing in this 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 of, or transmission of a Repertoire Work.

(5) Nothing in this tariff prevents the Educational Institution, or any Authorized Person from using the Internet or another public network to gain access to a Repertoire Work for the purpose of using it in accordance with this tariff, or from providing a link or a hyperlink to a Repertoire Work that is posted or stored on the Internet or another public network.

(6) For clarity, the licences granted pursuant to section 3 apply only to the Copying and/or Communication of Repertoire Works, irrespective of the source of those Repertoire Works. No licence is granted to the Educational Institution or any Authorized Person to gain or secure access to Published Works.

Reporting

6. (1) For each Course Collection Copied and/or Communicated 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 and/or Communicated from each Published Work;
- (k) Total number of pages Copied and/or Communicated from each Published Work;
- (l) Total number of sets Copied and/or Communicated of each Course Collection;
- (m) Subcontractor Copying and/or Communicating a Course Collection (if applicable); and
- (n) New Published Works added to the Course Collection in the reporting month.

(2) Within 30 days after the end of each month, the Educational Institution shall forward the record in section 6(1) to Access Copyright.

Royalties

7. (1) The Educational Institution shall pay an annual royalty to Access Copyright calculated by multiplying the number of its Full-time-equivalent Students by the royalty rate of

- (a) \$26.00 CAD for Universities; or
- (b) \$10.00 CAD for all other Educational Institutions.

Payment

8. (1) Royalties shall be due on or before January 31 for each year of this tariff.

(2) No later than January 31 of each year of this tariff, the Educational Institution shall deliver to Access Copyright a written report specifying the number of Full-time-equivalent Students as of the FTE Determination Date for the current Academic Year.

(3) The annual royalty payable under this tariff is exclusive of any federal or provincial taxes.

Interest

9. Any payment not received by Access Copyright by its due date shall bear interest from such due date until the date the amount is received. Interest shall be calculated daily at a rate equal to one 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.

Subcontracting of Uses

10. The Educational Institution may authorize by written agreement a person other than an Authorized Person (a "Subcontractor") to perform the acts set out in section 3, subject to the conditions set out in sections 2, 3, 4 and 5, 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;
- (c) the Subcontractor permits all surveying under this tariff and complies with all conditions, restrictions, and limitations set out in this tariff; and

(d) the Subcontractor may not further subcontract any rights or obligations granted or imposed under this tariff.

Attribution

11. Copies and/or Communications made pursuant to this tariff shall include, on at least one page,

(a) a credit to the author, artist or illustrator, and to the source; and

(b) a notice stating, "Copied and/or Communicated under the *Access Copyright Post-Secondary Educational Institution Tariff, 2021-2023*. Further reproduction, distribution or transmission is prohibited, except as otherwise permitted by law."

Notification of the Terms and Conditions of Copying and/or Communicating

12. The Educational Institution shall ensure there is affixed, within the immediate vicinity of each machine or device used for making, viewing or transmitting Published Works in a place and manner that is readily visible and legible to persons using such machine or device, a notice of the terms of this tariff and of the tools available to the Educational Institution to confirm a Published Work's status as a Repertoire Work.

Surveys

13. (1) Once every Academic Year, Access Copyright may advise the Educational Institution of Access Copyright's intention to conduct a bibliographic and volume survey of the uses permitted hereunder. Upon request by Access Copyright, the Educational Institution will participate in the survey and will ensure that all Authorized Persons cooperate fully with the requirements of Access Copyright.

(2) The Educational Institution shall give Access Copyright, on reasonable notice, right of access throughout the Educational Institution's premises, including full access to the Secure Network and all Course Collections, at any reasonable times, to administer the survey. Such access may be subject to reasonable arrangements for supervision as required by the Educational Institution to ensure the security of its premises, including its computer systems and networks, and to maintain the confidentiality of personal or other confidential data.

(3) If an Educational Institution unreasonably refuses to participate in the survey or otherwise does not comply with this section, the licences in sections 3 and 10 will cease to be in effect on written notice from Access Copyright until Access Copyright provides further notice that the deficiency has been remedied.

(4) Any survey shall respect all applicable privacy laws and principles of academic freedom.

Royalty and Compliance Audits

14. (1) The Educational Institution shall keep and preserve, for a period of six (6) Years after the end of the Academic Year to which they relate, records from which the royalties and reports due to Access Copyright under this tariff can be readily ascertained.

(2) No more than once per Academic Year, Access Copyright may audit these records during normal business hours on seven days' written notice to the Educational Institution.

(3) If selected for an audit, the Educational Institution shall ensure that it and all Authorized Persons cooperate fully with Access Copyright.

(4) The Educational Institution shall give Access Copyright, on reasonable notice, right of access throughout the Educational Institution's premises in order to organize and carry out an audit, including full access to the Secure Network and all Course Collections. Such access may be subject to reasonable arrangements for supervision as required by the Educational Institution to ensure the security of its premises, including its computer systems and networks, and to maintain the confidentiality of personal or other confidential data.

(5) Access Copyright shall, upon receipt, supply a copy of the report of the audit to the Educational Institution which was the subject of the audit.

(6) Adjustments in the amount of royalties owed (including overpayments) as a result of the discovery of an error or otherwise, shall be applied to the next invoice issued by Access Copyright to the Educational Institution or, if the tariff has expired, paid or refunded within 60 days.

(7) If an audit discloses that the Educational Institution has misreported its records, the licences in sections 3 and 10 will cease to be in effect on written notice from Access Copyright until Access Copyright provides further notice that the deficiency has been remedied.

(8) If an audit discloses that royalties due have been understated in respect of any instalment payable pursuant to section 8 by more than 10 percent, the Educational Institution shall pay the reasonable costs of the audit.

(9) Any audit shall respect all applicable privacy laws and principles of academic freedom.

Compliance

15. The Educational Institution shall take steps to ensure that the conditions in sections 4 and 5 are complied with and that no Copying and/or Communicating by Authorized Persons or Subcontractors takes place in contravention of the conditions set out in sections 4 or 5.

Addresses for Notices and Payment

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

Delivery of Notices and Payment

17. (1) A notice may be delivered by hand, by postage-paid mail, by fax or by 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 (3) three business days after the day it was mailed.

(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.

Transitional Provision: Interest Accrued before the Publication of the Tariff

18. (1) Any amount payable before [insert date of publication of the tariff] shall be due [insert date immediately following the publication of the tariff] and shall be increased by using the multiplying factor (based on the Bank Rate) set out in the following table [insert table with applicable Bank Rate].