

Most Canadian Universities and Colleges Outside of Quebec Rely on Fair Dealing Rather than Access Copyright

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Evidence Summary

Most Canadian Universities and Colleges Outside of Quebec Rely on Fair Dealing Rather than Access Copyright

A Review of:

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Abstract

Objective – To investigate the interpretations of fair dealing applied across Canadian post-secondary educational institutions outside of Quebec and to determine whether such institutions have a licence with Access Copyright.

Design – Descriptive/quantitative study.

Setting – Canadian post-secondary education sector, excluding Quebec.

Subjects – A total of 159 Canadian post-secondary institutions outside of Quebec, including 75 universities and 84 colleges.

Methods – A list of Canadian post-secondary educational institutions outside of Quebec was compiled. Data from participants relating to the research objective—reliance on an Access Copyright licence or use and interpretation of fair dealing—was collected via internet searches or, if unavailable online, via direct telephone communication with participants.

Main Results – A majority of Canadian post-secondary educational institutions outside of

Quebec, approximately 78% (124 institutions), did not have a licence with Access Copyright. The smaller the institution, the likelier it was to have an Access Copyright licence. This was in part linked to the fact that smaller institutions typically do not have staff specializing in copyright; savings from terminating Access Copyright licences (charged on a per student basis) would not justify the creation of such positions. Regarding fair dealing, 18% of study participants based their approach on the Supreme Court of Canada's six-factor test (29 institutions), while 53% applied the fair dealing guidelines created by Universities Canada (85 institutions).

Conclusion – Most of the institutions studied did not have Access Copyright licences and were relying on fair dealing instead, suggesting a bellwether for the copyright climate in the Canadian higher education sector towards fair dealing. Institutions may benefit from a future national consensus regarding interpretations of fair dealing concepts.

Commentary

This research paper relates to a somewhat niche area. In part, as described by the researchers (p. 5), this may be due to the fact that the topic of the paper is relatively new and restricted to Canada. Trosow (2013) provides a snapshot of the sector as of 2013, shortly after the transition from Access Copyright to fair dealing licences in Canada. In addition to the proposed increase in amounts charged for a licence in 2010, and the heavy-handed auditing and reporting requirements imposed by Access Copyright discussed by the researchers (pp. 2-3), Trosow (2013) supports findings from this study. Namely that this trend is linked to an expanded interpretation of fair dealing resulting from several Supreme Court of Canada decisions, as well as a 2012 legislative change in the Canadian Copyright Act. More recently, Zerkee (2017) and Patterson (2017) specifically analyzed the roles of those managing copyright within post-secondary educational institutions but did not include any evaluation of Access Copyright and fair dealing preferences.

The next portion of this commentary loosely applies the "Quantitative Research Evaluation Checklist" (QREC) described by Efron and Ravid (2018, p. 105). There were no major ethical considerations for this study, and the results were clearly expressed. The significance of the results from this study could perhaps have been described in greater detail, but the study did quantitatively establish what was previously anecdotally surmised. The researchers provided helpful avenues for potential future research, suggesting that a qualitative approach investigating context and motivations would supplement their findings and provide openings for further discussion. For institutions where information about potential participants was not publicly available, only ten were contacted by telephone. The researchers acknowledge this as a limitation of the study (p. 18).

Overall, this article should be of particular interest to librarians who work in the Canadian post-secondary education sector, since they are often responsible for copyright licensing and fair dealing (Zerkee, 2017). For institutions without an Access Copyright licence that make full use of fair dealing, it should be comforting to see these results. For those relying on making payments to Access Copyright rather than fair dealing, however, it suggests that they may wish to re-evaluate their approach.

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