



To:

Don Wright (British Columbia Institute of Technology)

Kathryn Laurin (Camosun College)

Kris Bulcroft (Capilano University)

John Bowman (College of New Caledonia)

Nicholas Rubidge (College of the Rockies)

Scott McAlpine (Douglas College)

Rob Burnett (Emily Carr University of Art + Design)

Jack McGee (Justice Institute of BC)

John McKendry (Kwantlen Polytechnic University)

David Ross (Langara College)

Ken Tourand (Nicola Valley Institute of Technology)

Jan Lindsay (North Island College)

Laurie Rancourt (Northern Lights College)

Denise Henning (Northwest Community College)

Jim Hamilton (Okanagan College)

Allan Cahoon (Royal Roads University)

Angus Graeme (Selkirk College)

Andrew Petter (Simon Fraser University)

Alan Shaver (Thompson Rivers University)

Stephen J. Toope (University of British Columbia)

George Iwama (University of Northern BC)

Mark Evered (University of the Fraser Valley)

David Turpin (University of Victoria)

Kathy Kinloch (Vancouver Community College)

Ralph Nilson (Vancouver Island University)

June 28th, 2012

Dear Presidents,

The British Columbia Library Association (BCLA) was concerned to learn of the agreement reached between Access Copyright and the Association of Universities and Colleges Canada (AUCC).

BCLA supports the University of British Columbia's decision not to sign a license with Access Copyright, and the position of the Canadian Association of University Teachers (CAUT) on the model agreement. The UBC Open Letter is available here:

<http://copyright.ubc.ca/broadcast-e-mails/broadcast-e-mail-ubc-is-not-signing-a-license-agreement-with-access-copyright-may-15-2012/>

The agreement between Access Copyright and AUCC presents significant challenges for associations, educational institutions and information providers. These include:

Existing Rights and Expanded Definition of Copying: The expansion of activities defined as "copying" in the model license is of great concern. The fair dealing provisions within the Copyright Act give a much narrower definition of what qualifies as copying than does the model license. Fair dealing provisions allow faculty and students to copy works without permission or payment. An example of the model license's broad definition is where it states that "posting a link or hyperlink to a digital copy" is copying, which contradicts a recent Supreme Court of Canada ruling (*Crookes v. Newton*) and the June 21 Federal Court ruling (*Richard Warman and National Post Co. v. Mark Fournier and Constance Fournier*). Institutions are already paying heavy premiums to license digital content, the terms of these licenses granting additional copying and sharing rights not covered by current legislation. If institutions agree to the model license they will be paying for already existing rights, or paying double for extended rights.



BCLA urges institutions to consider the potential risks should Access Copyright be given control over royalty fees.

Increase in Fees: The Access Copyright fees have increased from \$3.38 per FTE (Full Time Equivalent) plus 10¢ per course-package page, to \$26.00 per FTE. The value offered for this money is questionable on two counts – first, the decline of course package printing in recent years (replaced by the use of licensed and free digital resources) and, second, the uncertain number of content owners represented by Access Copyright. BCLA agrees with the position that institutions should be paying less, not more, for materials that support students, education and learning.

Pricing Uncertainty: The AUCC press release on the Access Copyright Model License states that the license “provides long-term certainty on price”. However, the fine print of the model license appears to contradict this. Sections 14, Records Retention and Audit, and Section 15, Adjustments, state that institutions that sign this license may be liable for additional fees for use, and potentially the costs of the audit.

The Model License also talks about copying no more than 10% of works in paper format or 20% of works in digital format. This is less than institutions currently have rights to under the vast majority of their electronic licenses. In return, institutions take on the burden of what could be highly cumbersome audit procedures, and as the result of auditing, may pay more for use and for the costs of the audits if Access Copyright found that their royalty assessments were an “understatement”.

Positive and Alternative Options: Bill C-11, the Copyright Modernization Act, has passed the House of Commons and will expand the fair dealing rights for the academic community. Copyright decisions pending from the Supreme Court of Canada, particularly the K-12 case, may also have positive outcomes. Universities and colleges do not need to pay for rights they already own, and additional ones they may have in the near future. These are important considerations when planning future directions.

During times of budget and service cuts across the information and educational fields, it is perplexing that institutions would consider paying unnecessarily for rights already belonging to them. BCLA supports the position taken by UBC and CAUT on the model agreement and hopes that the information presented here supports your organization’s decision not to sign such an agreement.

Yours sincerely,

A handwritten signature in blue ink that reads "June Stockdale". The signature is fluid and cursive.

June Stockdale
President, BCLA