



CLA Statement on Access Copyright lawsuit against York University

(Ottawa, 17 May 2013) The Canadian Library Association is disappointed that Access Copyright has chosen to file a law suit against York University; file an interim tariff application for the K-12 sector with the Copyright Board of Canada; and file a tariff application for the post secondary sector for the years 2014 – 2017 with the Copyright Board.

In its press release announcing these three actions, Access Copyright invites former customers “*back to the table*” to discuss things further. The Canadian Library Association, on behalf of its members, is unable to understand what the topic of such discussions could be, since Access Copyright has so many legal processes taking place at the same time. For example, there is a pending tariff for the years 2011–2013 before the Copyright Board in which Access Copyright values its members’ rights at \$35.00 per FTE for College Students. At the same time Access Copyright is offering licences to colleges for the years 2011-2013 for \$10.00 per FTE for College Students. CLA does not understand why Access Copyright values its own members’ rights differently in the two parallel processes it has initiated. Nor, indeed, do we understand how providing a licence *and* applying to the Copyright Board for a tariff can be initiated by Access Copyright at the same time in light of the “or” in section 70.12 of the Copyright Act.

The lawsuit against York University is yet another source of confusion. Although the allegations against York University use the language of copyright, CLA is unable to see any relief sought by Access Copyright that can be supported under the Copyright Act. We do not believe Access Copyright should ever be able to force an individual or institution to be a customer for the copyright holders’ rights which it represents. The Supreme Court has said to individuals and institutions “fair dealing is always available.” We see no requirement under the Copyright Act that anyone pay for uses that they are not making: requiring an institution, like York University or any of CLA’s members, to participate in a tariff process even though it is confining its uses of materials and information to uses that are not represented by the Tariff applicant (in this case, Access Copyright) seems absurd and not contemplated by the Copyright Act.

CLA strongly urges Access Copyright to abandon its lawsuit against York University. We also urge our members to continue to exercise their own professional and institutional judgments in making decisions about the extent to which they rely upon their users’ rights and upon approaches to serving their users which do not touch upon the rights represented by Access Copyright.

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