



Federation of  
Post-Secondary Educators  
of BC

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June 19, 2012

John McKendry, President  
Kwantlen Polytechnic University  
12666 - 72nd Avenue  
Surrey, BC V3W 2M8

**Re: Access Copyright**

Dear Mr. McKendry,

On behalf of the 10,000 faculty and staff who are represented by our Federation, I am writing to express our deep concerns about support that some public post-secondary institutions are prepared to extend to Access Copyright. Access Copyright has put forward a proposed tariff, one that significantly changes terms, conditions, principles, and definitions related to copyright. Although the Association of Universities and College of Canada (AUCC) agreed to most of the substance of that tariff in the proposed model agreement it signed with Access Copyright, that support is not widely reflected in the actions of AUCC member institutions. We firmly believe that the proposed model harms the interests of faculty and students, fails to reflect the current court decisions in this area, ignores the prospect of pending court actions as well as legislative changes related to copyright and undermines efforts to create better ways of accessing, using and sharing educational and research material.

It's worth noting that in BC some of the largest post-secondary institutions—UBC in particular—have decided not to back the AUCC model agreement. That fact and the major concerns of faculty and students, not just here in BC, but across Canada, should be reason enough for senior administrators across the system to take a much more cautious approach to this issue.

By way of background, it's important to remember that for many years universities purchased licenses from Access Copyright so that students and faculty could reproduce copyrighted material. However, over time the academic community raised objections to the arrangement, noting the administrative burden and issues of privacy as well as Access Copyright's aggressive practices in this area. When Access Copyright began to lobby for legislative changes, those actions simply compounded the problem.

It is clear that the model agreement proposed by AUCC has serious flaws. It will mean a significant increase in fees, much of which will be paid by students.

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The model agreement changes the definition of copyright, a change that is at odds with a recent Supreme Court of Canada decision. The model agreement also amounts to paying Access Copyright for many rights for which no payment is required due to fair dealing, site licenses, and open access.

The issue of privacy is also a major concern for our members. Provisions in the proposed model agreement mandate the creation of surveillance instruments to help enforce the tighter restrictions that the model agreement places on the downloading and transmission of electronic materials. The extent of that surveillance is not yet defined, but the requirement leaves wide open the potential for privacy violations that would not only compromise standards at every post-secondary institution, but also set a dangerous precedent for students and faculty throughout BC.

We also see the model agreement as having a serious and negative impact on the use of scholarly material. Provisions in the model agreement will prohibit the storage or indexing of copies of articles and other material, an activity that is fundamental to scholarly work in every discipline.

And finally, moving ahead with the model agreement comes at a time when the government of Canada is about to pass into law amendments to the *Copyright Act*. Bill C-11 contains copyright provisions that are beneficial to educational institutions. Moreover, additional court actions involving copyright disputes are still working their way through the court system. The outcome of those court cases along with the proposed amendments included in C-11 need to be fully assessed before any major commitments to change at an individual institutional level are made.

The Access Copyright proposed model agreement may be a benefit to that organization, but it comes at the expense of faculty, students, and the post-secondary institutions in which they work and learn. Plans by some administrators to embrace the model agreement are ill-timed and at odds with the interests of its faculty and students. We urge administrators at every post-secondary institution to work with their local faculty association as well as their local student society to carefully weigh their options and work to find an appropriate way forward on this complex and important issue.

Sincerely,



Cindy Oliver  
President

cc: **Terri Van Steinburg, President, Kwantlen Faculty Association**