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What Has Changed Since 2015? A New and Expanded Update on Copyright Practices and Approaches at Canadian Post-Secondaries

Rumi Graham and Christina Winter

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See table of contents

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Article abstract

Objective – The aim of this study is to update our understanding of how Canadian post-secondary institutions address copyright education, management, and policy matters since our last survey conducted in 2015. Through the new survey, we seek to shed further light on what is known about post-secondary educational copying and contribute to filling some knowledge gaps such as those identified in the 2017 statutory review of the Canadian Copyright Act.

Methods – In early 2020, a survey invitation was sent to the person or office responsible for oversight of copyright matters at member institutions of five Canadian regional academic library consortia. The study methods used were largely the same as those employed in our 2015 survey on copyright practices of Canadian universities.

Results – In 2020, respondents were fewer in number but represented a wider variety of types of post-secondary institutions. In general, responsibility for copyright services and management decisions seemed to be concentrated in the library or copyright office. Topics covered and methods used in copyright education remained relatively unchanged, as did issues addressed in copyright policies. Areas reflecting some changes included blanket collective licensing, the extent of executive responsibility for copyright, and approaches to copyright education. At most participating institutions, fewer than two staff were involved in copyright services and library licenses were the permissions source most frequently relied on “very often.” Few responded to questions on the use of specialized permissions management tools and compliance monitoring.

Conclusion – Copyright practices and policies at post-secondary institutions will continue to evolve and respond to changes in case law, legislation, pedagogical approaches, and students’ learning needs. The recent Supreme Court of Canada ruling on approved copying tariffs and fair dealing provides some clarity to educational institutions regarding options for managing copyright obligations and reaffirms the importance of user’s rights in maintaining a proper balance between public and private interests in Canadian copyright law.

Evidence Based Library and Information Practice

Research Article

What Has Changed Since 2015? A New and Expanded Update on Copyright Practices and Approaches at Canadian Post-Secondaries

Rumi Graham
University Copyright Advisor and Graduate Studies Librarian
University of Lethbridge Library
Lethbridge, Alberta, Canada
Email: grahry@uleth.ca

Christina Winter
Copyright and Scholarly Communications Librarian
University of Regina Library
Regina, Saskatchewan, Canada
Email: christina.winter@uregina.ca

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Abstract

Objective – The aim of this study is to update our understanding of how Canadian post-secondary institutions address copyright education, management, and policy matters since our last survey conducted in 2015. Through the new survey, we seek to shed further light on what is known about post-secondary educational copying and contribute to filling some knowledge gaps such as those identified in the 2017 statutory review of the Canadian *Copyright Act*.

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Conclusion – Copyright practices and policies at post-secondary institutions will continue to evolve and respond to changes in case law, legislation, pedagogical approaches, and students' learning needs. The recent Supreme Court of Canada ruling on approved copying tariffs and fair dealing provides some clarity to educational institutions regarding options for managing copyright obligations and reaffirms the importance of user's rights in maintaining a proper balance between public and private interests in Canadian copyright law.

Introduction

This study builds on a national survey undertaken in 2015 to probe how Canadian universities managed their copyright practices in light of major shifts that had occurred in the copyright sphere (Graham & Winter, 2017). The 2015 study updated a study by Horava (2010) that explored copyright communication in Canadian university libraries. We wanted to understand how major developments in Canadian copyright since 2015 have impacted post-secondary copyright practices. To that end, in early 2020 we conducted a follow-up survey. The new survey was distributed to an expanded pool of potential participants to seek current information on copyright practices across a wider variety of types of institutions beyond just universities.

Since 2015, we have witnessed several significant developments in Canada's educational copying landscape. Four of these developments are legal proceedings involving post-secondary institutions, one being the outcome of the class action sought by Copibec against Université Laval after the university exited its blanket license in 2014 (Copibec, 2014). The other three are court rulings arising from the 2013 Access Copyright (AC) lawsuit alleging that fair dealing guidelines adopted by York University authorize and encourage unlawful copying and that the university must operate within the approved interim tariff (Access Copyright, 2013).

Three further developments are the 2017 statutory review of the *Copyright Act*, the 2018 signing of a new North American free trade agreement requiring Canada to extend its term of copyright, and Copyright Board approval in 2019 of two AC post-secondary tariffs. For an overview of each of these developments in terms of their relevance to copying practices of post-secondary institutions, see Appendix 1.

Literature Review

Copyright practices of post-secondary institutions have been the subject of several studies published since 2015. Zerkee (2017) surveyed copyright administrators at Canadian universities about their copyright education programs for faculty. Most respondents said they offered some type of copyright education for instructors, but few conducted formal

evaluations of their effectiveness. Patterson (2017) interviewed Canadian university staff holding copyright positions about their backgrounds and duties. Most interviewees were librarians and few had formal legal or copyright training. A notable finding was that almost half of the interviewees said they did not know which office or individual was the final authority on their institution's copyright decisions. Patterson advocated for faculty status and academic freedom for copyright staff as their work may involve questioning or critiquing administrative decisions (2017, p. 8).

Di Valentino (2016) examined copyright practices of Canadian universities through a content analysis of university copyright policies, guidelines, and publicly accessible copyright web pages and by surveying teaching faculty about their copyright practices and awareness of copyright policies and training. Findings supported the thesis that while Canadian statutory and case law provide educational institutions with sufficient grounds for unauthorized but lawful uses of copyrighted works, university copyright policies tend to be overly restrictive and risk averse. Di Valentino warned that although a blanket copying license might be less expensive, "universities must ask themselves about the implications of asking for permission where none is needed, or 'agreeing' to licence terms that claim posting a link is copying" (2016, p. 184).

Beyond Canada, Lewin-Lane et al. (2018) conducted a literature review and environmental scan to learn about copyright services offered by U.S. higher education institutions and their libraries. Noting a high degree of variability in their findings, the researchers concluded that clear patterns in copyright service models have yet to emerge in U.S. academic libraries. They suggested it would be useful to develop a centralized repository of copyright best practices. Secker et al. (2019) used findings from a multi-national European panel discussion on copyright literacy levels of copyright librarians to reflect on underlying rationales for copyright education. Recognizing that many librarians lack confidence in their knowledge of copyright law, the researchers proposed that library associations take a lead role in offering copyright education programs for their members and outlined a five-part framework for critical copyright literacy. Fernández-Molina et al. (2020) examined the websites of 24 high-ranking universities with copyright offices in the U.S., Canada, Australia, Netherlands, and the U.K. to gather information about services offered and copyright staff profiles. They found that services offered by copyright offices had expanded beyond guidance on using copyrighted materials for teaching purposes to address scholarly communications topics and services that included author rights and publication agreements. The study identified fair dealing/fair use and other infringement exceptions to be among the most important user-related topics addressed by the copyright offices examined. The researchers concluded that "the needs of professors, researchers and students are nonetheless similar in all countries. In other words, copyright and scholarly communication offices are a dire necessity worldwide" (2020, p. 11).

Methods

Our 2020 survey employed methods and questions that were similar to those used in our 2015 survey (Graham & Winter, 2017). Both authors obtained ethics approval for the 2020 survey protocols from their respective institutions. The survey questions were developed and pre-tested in English and were then translated into French. The survey was created and managed on the Qualtrics platform (https://www.qualtrics.com/). Participants were offered the option of responding in English or French and after the survey closed, textual responses submitted in French were translated into English for data analysis purposes. A professional translator completed all needed translations to and from French.

One methodological difference introduced in the 2020 survey was wider survey distribution. As we desired a more inclusive picture of how copyright is managed across Canadian post-secondaries, we expanded the pool of potential respondents by including not only universities, but colleges and institutes as well. This was an area for further research identified in our 2015 study (Graham & Winter, 2017). All universities that received a 2015 survey invitation were again invited to complete the 2020 survey. These institutions comprised all members of CAUL (Council of Atlantic University Libraries), BCI (Bureau de coopération interuniversitaire), and OCUL (Ontario Council of University Libraries), as well as all university (full) members of COPPUL (Council of Prairie and Pacific University Libraries). In addition, we extended an invitation to participate in the 2020 survey to affiliate members of COPPUL, most of which are colleges and institutes, and to members of CLO (College Libraries Ontario). A total of 119 institutions were invited to participate in the 2020 survey.

Another methodological adjustment we made in 2020 was to send survey invitations directly to the copyright office or copyright specialist instead of the university librarian or library director for each institution included in our study. In most cases we were able to locate contact information for the copyright office or copyright staff through institutional websites or staff directories and in the few instances where this approach was unsuccessful, the invitation was directed to the head of the institution's library. Just as we did in the 2015 survey, 2020 invitation recipients were asked to forward the invitation to another employee at their institution if that individual was better suited to respond. No individual received more than one survey invitation.[1]

Although the 2020 survey questions (see Appendix 2) were predominantly the same as those used in our 2015 survey (see Appendix 3), we made some minor changes and added some new questions. The new questions probed the size of each institution's copyright staffing complement, whether specialized software is used to manage permissions and licensing, the extent to which permission sources such as licensing or statutory provisions are relied on for copyright clearance work, how institutions cover transactional licensing costs, and whether a formal process for monitoring copyright compliance in the institutional learning management system (LMS) has been implemented.

The 2020 survey opened in mid-January 2020 and remained open for one month. About one week prior to the closing date, a reminder notice was sent to invited participants who had not responded. A total of 54 responses were received, of which 39 represented finished surveys. For the purposes of this study we analyzed only the 39 finished surveys.

Results

Responding Institutions

The 39 finished responses to the 2020 survey represent a 19% drop from the 48 responses received to the 2015 survey despite the larger pool of potential participants in 2020. Table 1 summarizes the 2020 survey response rates by consortium. Participation was highest within COPPUL (about 46%), followed by CAUL (about 39%). The 33% overall participation rate for the 2020 survey is about 46% lower than the 61% participation rate obtained in our 2015 survey (Graham & Winter, 2017). Compared to 2015 survey results, in 2020 the number of responses from CAUL and COPPUL institutions remained at similar levels, but significantly fewer responses were received from BCI and OCUL member institutions.

[1] One CLO member was excluded whose director was also the director of an OCUL member who received a survey invitation.

Table 1
Survey Respondents by Consortium, 2020

	Member/Affiliate Libraries	2020 Respondents	Response Rate
CAUL	18	7	39%
BCI	18	2	11%
OCUL	21	5	24%
CLO	23	7	30%
COPPUL	37	17	46%
No response		1	
Total/Average	117	39	33%

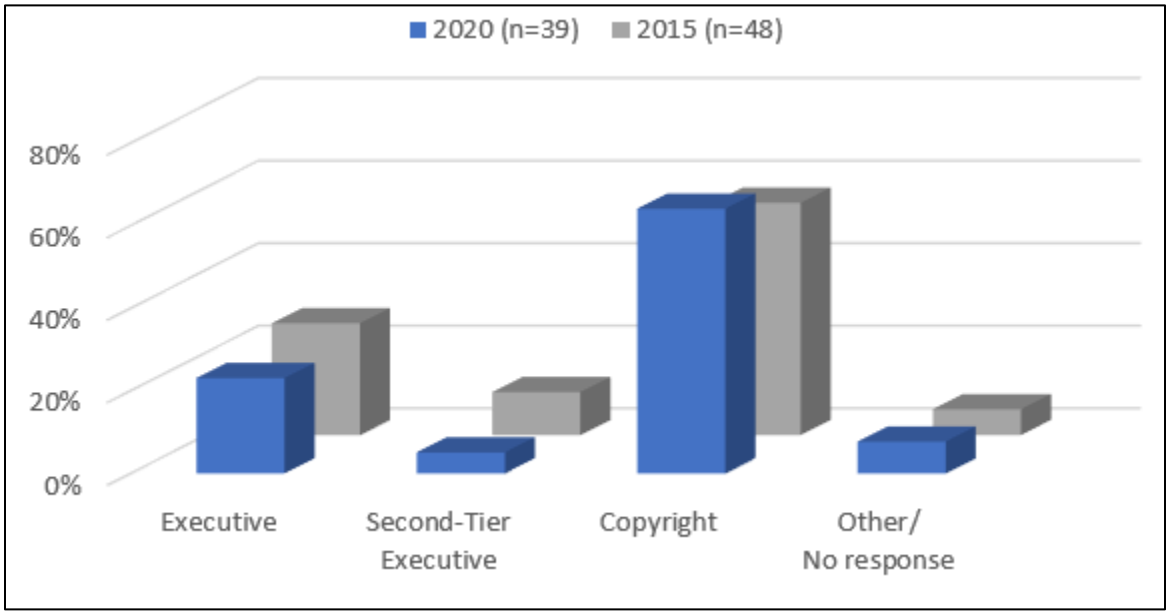

Figure 1
Survey respondents by position title, 2020 and 2015.

In terms of institutional size (full-time equivalent, or FTE, students), the numbers of 2020 survey respondents from large and small institutions were noticeably lower than those obtained in 2015, while the number of 2020 responses from medium-sized institutions was somewhat higher than that of 2015.

Regarding the position title of survey respondents, the 2020 survey results suggest that between 2015 and 2020 the locus of responsibility for copyright-related services, activities, and decisions shifted away from executive and second-tier executive positions, with a counterbalancing shift toward position titles containing the term "copyright" (Figure 1). Of the three responses in 2020 that were other than executive, second-tier executive, or copyright positions, two indicated that no single position or unit was solely responsible for copyright and the third said the responsible position was held by a library technician.

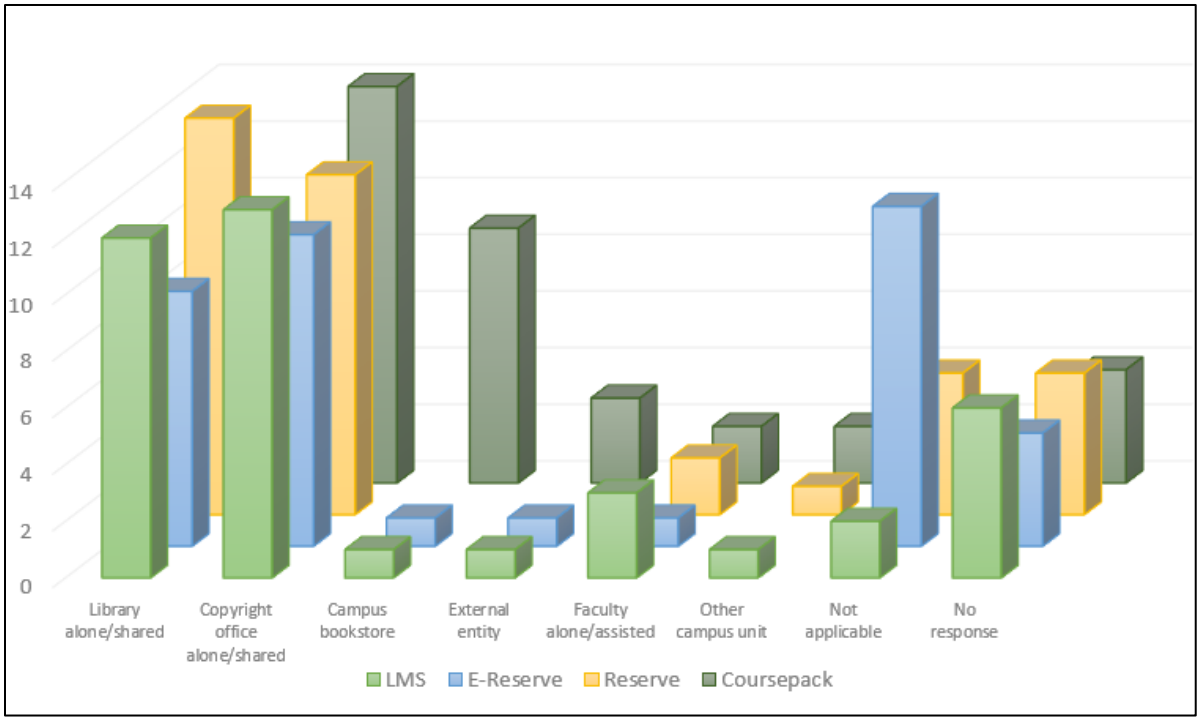

Figure 2
Responsibility for permissions clearance, 2020 (n=39).

Responsibility for Copyright

Copyright Education

In 2020, responsibility for education in the use of copyrighted works was concentrated in two campus units – the library or copyright office – whereas responsibility for this activity in 2015 was dispersed over a wider array of units that included central administration and a copyright committee. About 54% of 2020 survey participants said copyright user education was the responsibility of the copyright office alone or in a shared capacity and 38% said it was the responsibility of the library alone or shared. These two units together accounted for 92% of responding institutions. The remaining 8% of 2020 participants did not respond to this question.

We also found differences in the distribution of responsibility for copyright education for authors and other creators who are often the first owners of copyright in their works. Compared to the 2015 results, a greater proportion of 2020 respondents (about 41%) said the locus of responsibility for copyright owner education was the copyright office and a somewhat smaller proportion (about 36%) said responsibility lay in the library, in both cases acting alone or in a shared capacity with other units. But the overall picture remained constant: between 77% and 79% of respondents to both surveys said responsibility for copyright education for creators rested with the copyright office or the library, each acting alone or in partnership with other units.

Permissions Clearance

On the whole, the locus of responsibility for permissions clearance in 2020 was similar to the 2015 survey findings for materials distributed via the institutional LMS, e-reserve (electronic reserve), reserve (print reserve), and coursepack (Figure 2). At the same time, some unique 2020 responses prompted us to refine the permission categories. We split *Bookstore/Copyshop* into two

categories – *Campus bookstore* and *External commercial entity* – and converted the *Faculty* category to *Faculty alone/assisted.* We also split *Not applicable/No response* into separate categories to permit more detailed comparisons.

Delivery mode-specific comparisons of 2015 and 2020 responses regarding permissions responsibility are summarized in Figures 3 to 6. The 2015 survey results indicated the units most often responsible for clearing LMS, e-reserve and coursepack permissions were the library, alone or shared, followed by the copyright office, alone or shared, but this pattern was reversed in the 2020 survey results. In 2020, the library and copyright office, alone or shared, were collectively responsible for 60% or more of the permissions work for LMS and reserve materials. They were also collectively responsible for about 50% of permissions work for e-reserve and coursepack materials. The proportion of respondents who did not answer the permission responsibility questions more than doubled in 2020.

The library's lead role in reserve permissions work in the 2015 survey results remained evident in the 2020 results, albeit considerably attenuated. Another finding observed in the 2015 and 2020 survey results is that e-reserve was inapplicable or not offered at more than 30% of responding institutions. Interestingly, no 2020 survey respondent said that coursepack permissions clearance work was inapplicable at their institution. Permissions work for coursepack material is the only category that involved significant levels of participation from entities or campus units outside of the library and copyright office (Figure 6). From 2015 to 2020, the level of campus bookstore involvement in coursepack permissions remained constant while the involvement of external entities increased.

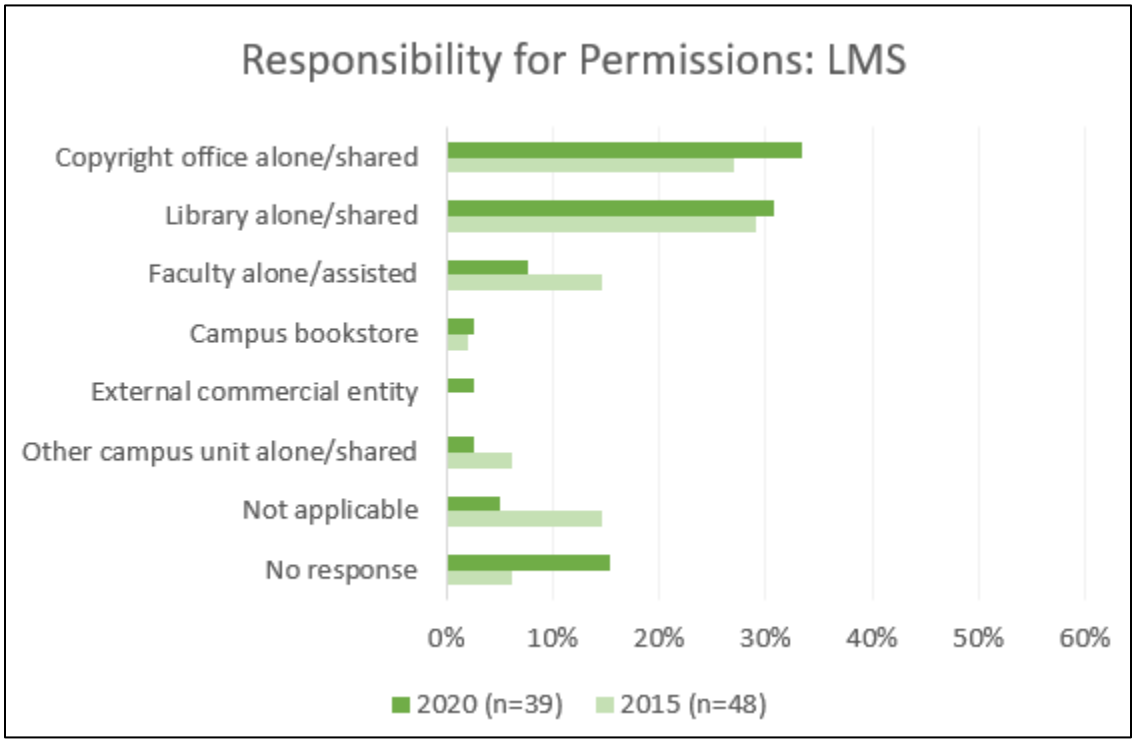

Figure 3
Responsibility for LMS permissions clearance, 2020 and 2015.

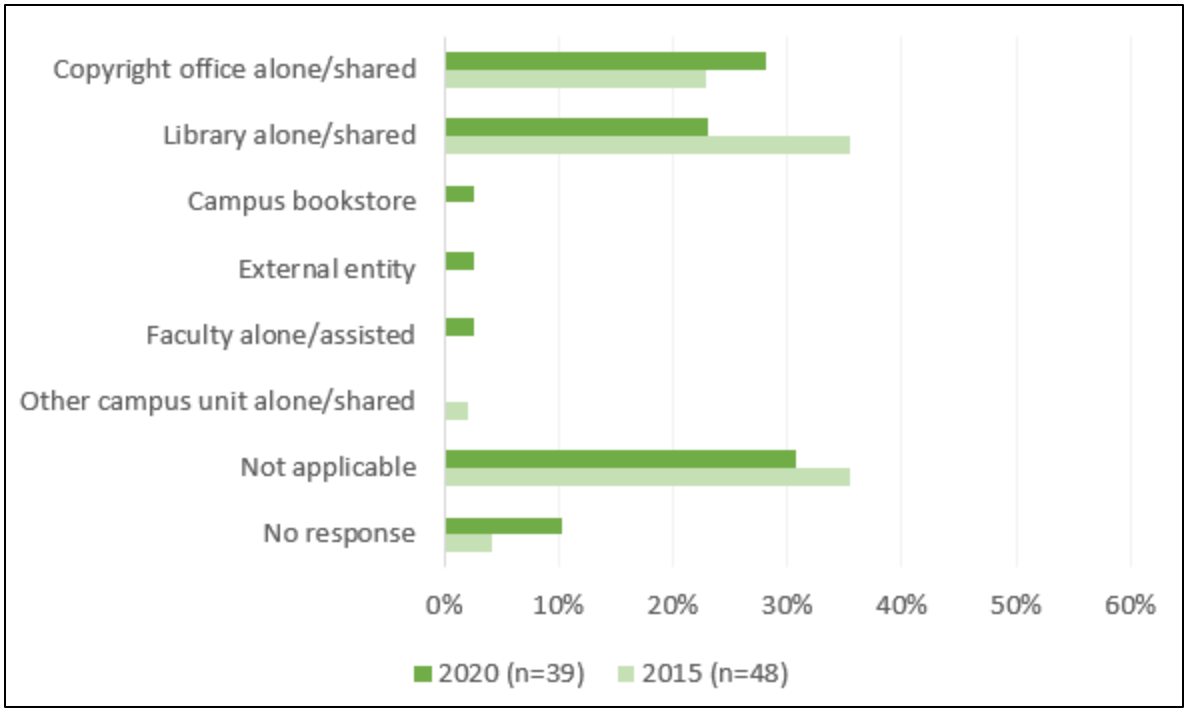

Figure 4
Responsibility for e-reserve permissions clearance, 2020 and 2015.

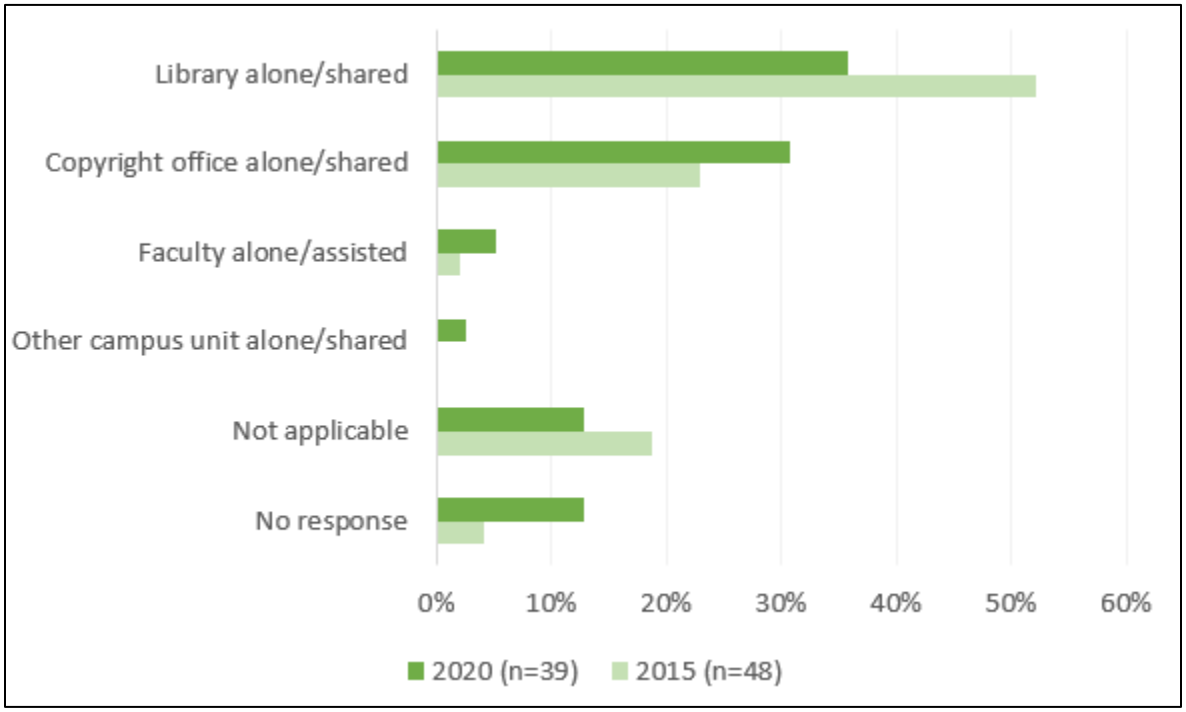

Figure 5
Responsibility for reserve permissions clearance, 2020 and 2015.

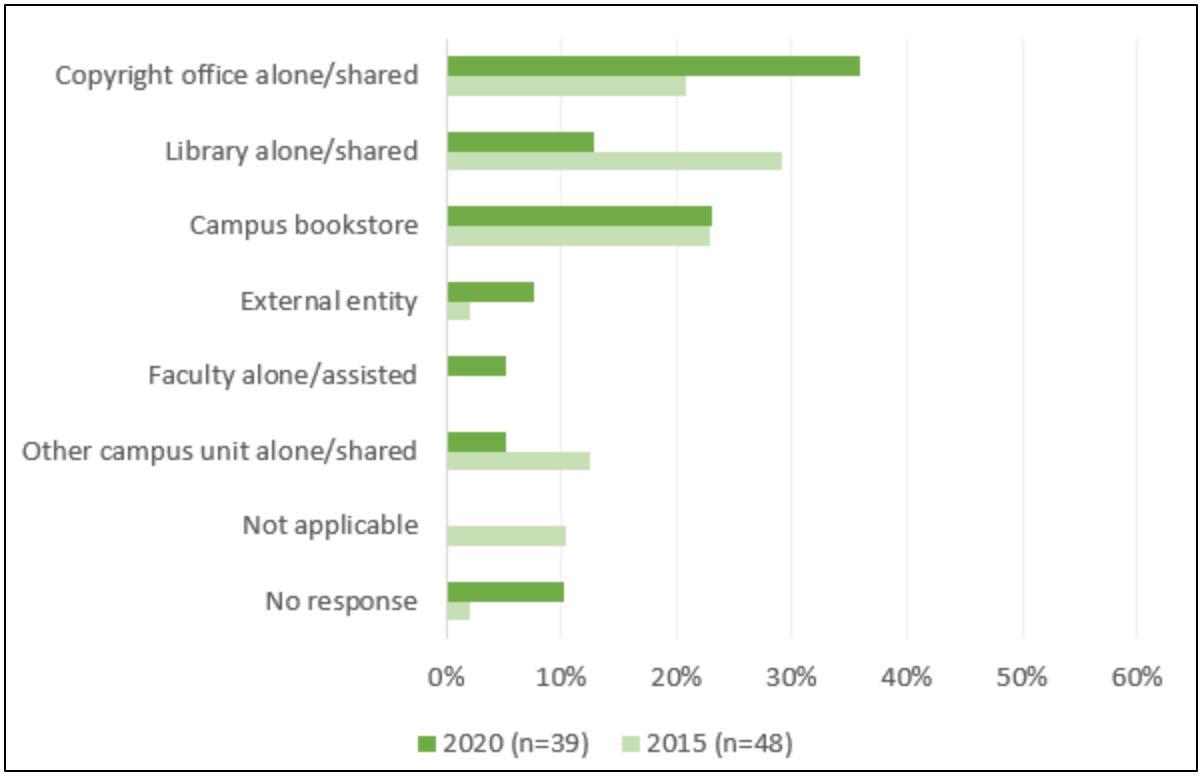

Figure 6
Responsibility for coursepack permissions clearance, 2020 and 2015.

Blanket Licensing Decisions

Between 2015 and 2020, responses to the question about responsibility for blanket licensing decisions shifted significantly (Figure 7). From 2015 to 2020, the proportion of respondents who said central administration was responsible for blanket licensing decisions fell from 50% to 31%. This shift was counterbalanced by an increase from 39% to 59% in the proportion of 2020 respondents who identified the library or copyright office as the responsible unit. In addition, one 2020 respondent indicated that an external entity was responsible for their institution's blanket licensing decisions.

Copyright Policies

Shifts also took place between 2015 and 2020 in the locus of responsibility for policies governing the use of copyrighted materials. While the library was, by far, the most frequently identified as the responsible unit for copyright user policies in 2015, by 2020 the locus of responsibility for copyright user education was most frequently identified to be the copyright office, followed closely by the library. Central administration was not far behind, with all three units acting alone or in a shared capacity. In 2020, central administration was also less frequently involved in policies governing copyright ownership. The 2020 survey responses revealed a three-way tie for this area of copyright responsibility among the copyright office, library, and central administration, alone or shared. As well, the proportion of respondents who said copyright policies for authors and other copyright owners was the responsibility of the research office or faculty association in each case increased slightly from 2015 to 2020.

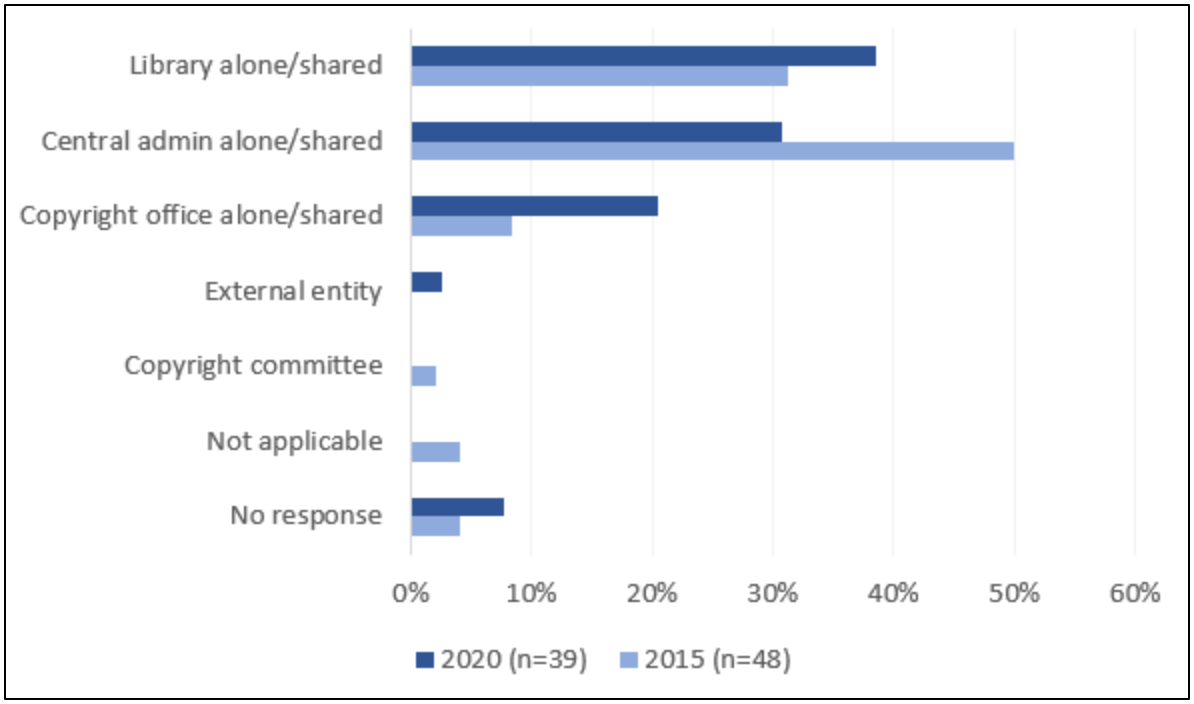

Figure 7
Responsibility for blanket licensing decisions, 2020 and 2015.

Copyright Staffing

The 2020 survey asked respondents to estimate the number of staff involved in providing copyright assistance or services at their institution, a question that did not appear in the 2015 survey. We received 37 responses providing a numeric estimate. As might be expected, the responses were quite varied, ranging from 0.1 to 15 staff positions involved in copyright work at a single institution. The mean average was just over 3.5 staff, the median was 2, and the mode was 1. By far the most common response (about 43%) among responding institutions was fewer than 2 staff (Figure 8).

Copyright Education

Topics and Methods

In general, education for users of copyrighted works appeared to remain more or less unchanged across the two surveys in terms of topics addressed and educational approaches. In 2015 and 2020, webpages and information literacy sessions were the most frequently used methods to deliver copyright education. The topics and issues most often addressed in user education remained exceptions to infringement such as fair dealing and requests for individual assistance.

A slight shift was observed between 2015 and 2020 in the topics most often addressed in education aimed at creators of copyrighted works. Of 43 responses received in 2015, owner/creator rights (53.5%) was identified most often, followed by negotiating publisher contracts or addenda and open access (37.2%). In the 2020 survey, those 2 topics were reversed—of 28 responses received, negotiating publisher contracts or addenda was the most frequently identified topic of copyright education for creators (46.4%) followed by owner/creator rights (25%).

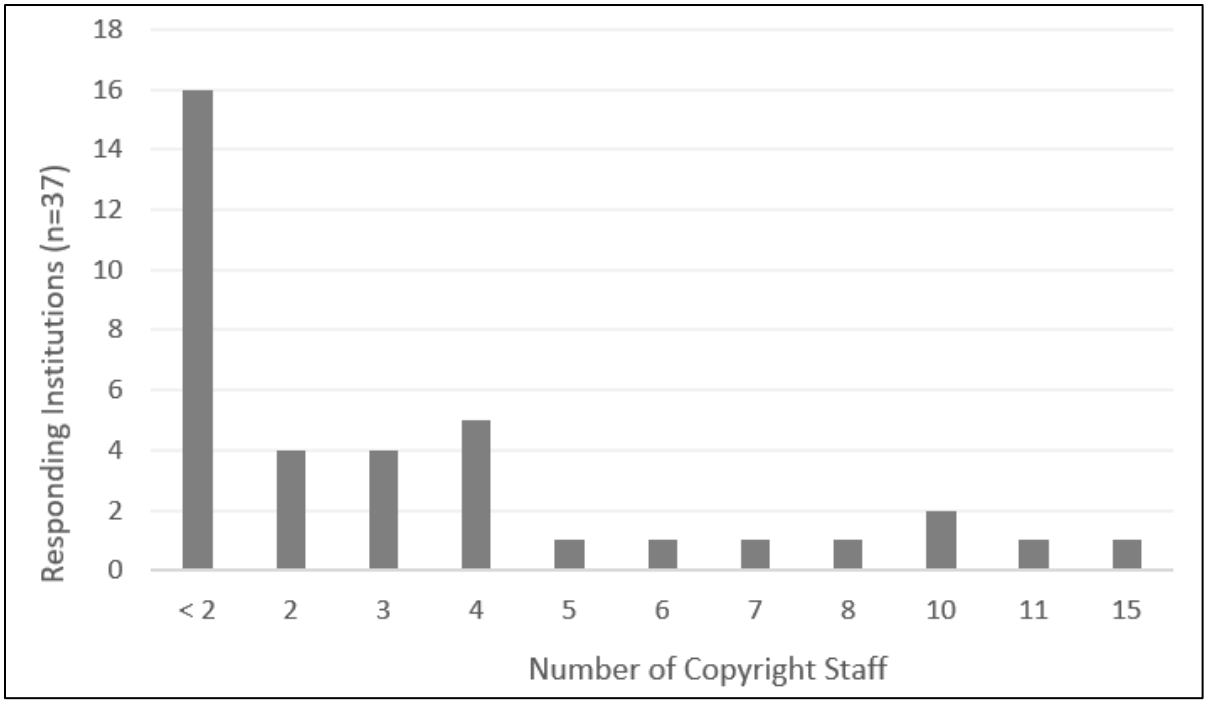

Figure 8
Number of staff responsible for copyright work at responding institutions, 2020.

Changes in Copyright Education

In the 2020 survey, of 35 responses received, slightly over half (51%) indicated that significant changes had occurred in the way their institution addressed copyright education within the previous 5 years. Some changes responded to shifts in areas of interest within the institutional community (e.g., "Faculty are more interested in the alternatives such as OER, library licensed e-resources and e-reserves. Also, some faculty are interested in copyright education and resources for their students") while other changes responded to an exit from blanket licensing (e.g., "Our institution increased its copyright education program significantly to coincide with the end of the institutional licence with Access Copyright"). Several respondents noted that changes stemmed from greater integration of copyright staff involvement in library and institutional activities (e.g., "New people in the position have become more involved in planning processes and faculty meetings, greater involvement in OERs and electronic reserves").

Respondents were also asked about ways in which their copyright education efforts could be enhanced. Among the 33 responses, themes that arose most frequently included staff and resources (including time), outreach, and increased efforts directed at copyright online education.

Copyright Policy

Policy Adoption and Issues Covered

In the 2020 survey, 92% of the 39 responding institutions indicated they had a copyright policy or copyright guidelines and only 1 respondent said their institution had neither. Over 87% of respondents noted that their copyright policies or copyright guidelines were publicly available.

Table 2
Copyright Policy Year of Establishment and Last Revision, 2020

Time Period	Policy Established: Frequency of Response (n=30)	Policy Last Revised: Frequency of Response (n=16)
1990-1999	12.8%	
2000-2009	7.7%	2.6%
2010-2020	56.4%	33.3%
under review		5.1%
not applicable	2.6%	
no response	20.5%	59%

The most commons topics addressed in copyright policies of responding institutions included fair dealing (51.4%), copyright guidelines (37.1%), and copyright policy (22.8%). Respondents were asked to identify the policy date of establishment and, if applicable, the most recent revision date (Table 2). Almost half of the respondents who provided a copyright policy establishment date said their institution's policy had been reviewed or was currently under review.

Six respondents indicated the areas in which policy revision were made. At two responding institutions, major revisions had been made in the areas of policy scope. At the other four responding institutions, revisions were either minor or they addressed one or more of the following topics: fair dealing, name changes, and inclusion of students.

Possible Enhancements

The 2020 survey asked respondents to identify ways their institutional copyright policies could be enhanced. This question received 26 responses but there were no clearly discernable patterns among the themes or topics mentioned. Between three and four respondents mentioned potential policy enhancements in one or more of the following areas: general usefulness, impact, clarity, faculty engagement, education or support, and more visibility and promotion.

Blanket Licensing

More than three-quarters of 37 respondents to the 2020 survey indicated that their institutions were operating outside of a blanket licensing environment, with the remaining respondents indicating their institutions were covered by a blanket license with Access Copyright or Copibec. This finding represents a significant change, as just over half of 2015 survey respondents said they were operating under a blanket license.

In the 2020 survey, of the eight institutions that reported having a blanket license, five were from Ontario (CLO) and (OCUL), two were from Quebec (BCI), and one was from Western Canada (COPPUL). A cross-tabulation of blanket licensing with institutional size suggests the likelihood of institutional reliance on blanket licensing decreases as institutional size increases. Six of the eight respondents at institutions with a blanket license provided the date on which their Access Copyright or Copibec license was initiated. These dates spanned 2000 to 2019 and each date was unique.

Copyright Permissions and Licensing

Assessment of Applicable Library Licenses

In 2015 and 2020, we asked respondents to indicate whether their institution typically checked for the existence of an applicable library license as a part of permissions clearance work.

This question asked about permissions work for five categories of materials: coursepacks produced in-house, coursepacks produced by copyshops, materials on reserve, materials on e-reserve, and materials distributed via the LMS. On the whole, the response patterns in both surveys were comparable (Figure 9). In 2015 and 2020, more than half of survey respondents said library licenses were checked as part of permissions work for readings made available via in-house coursepacks, the institutional LMS, and reserves.

There are also some differences between the 2015 and 2020 responses. The proportion of respondents who indicated that library licenses were checked for reserve readings fell from 71% in 2015 to 56% in 2020, but at the same time the proportion who said doing so was not applicable more than doubled from 2015 (4.2%) to 2020 (10.3%). There was also a downward shift from 58% in 2015 to about 44% in 2020 in the proportion of responses indicating library licenses were checked for e-reserve readings paired with a small upward shift from 27.1% in 2015 to 33.3% in 2020 in the proportion who said doing so was not applicable.

Managing Permissions and Licensing

A new question in the 2020 survey asked if a respondent's institution used a software application or platform to manage copyright permissions and licensing. Of the 37 responses received, 70% indicated no management software or platform was in use and 27% responded affirmatively. The remaining 3% of responses indicated that plans were in place to begin using licensed software in the near future. Respondents who indicated their institution uses a software application to manage permissions and licensing were asked to name the adopted system. Of the nine responses received, several indicated multiple tools were in use (Figure 10).

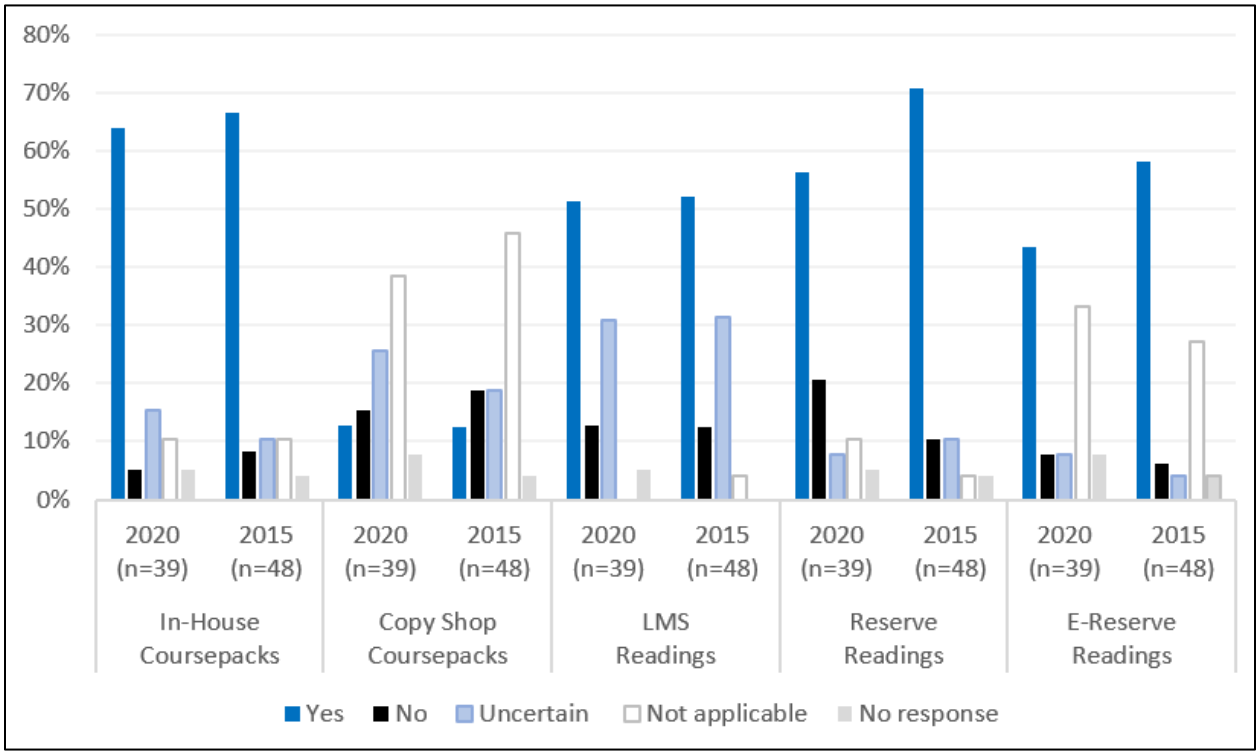

Figure 9
Assessment of applicability of library licenses during permissions work, 2020 and 2015.

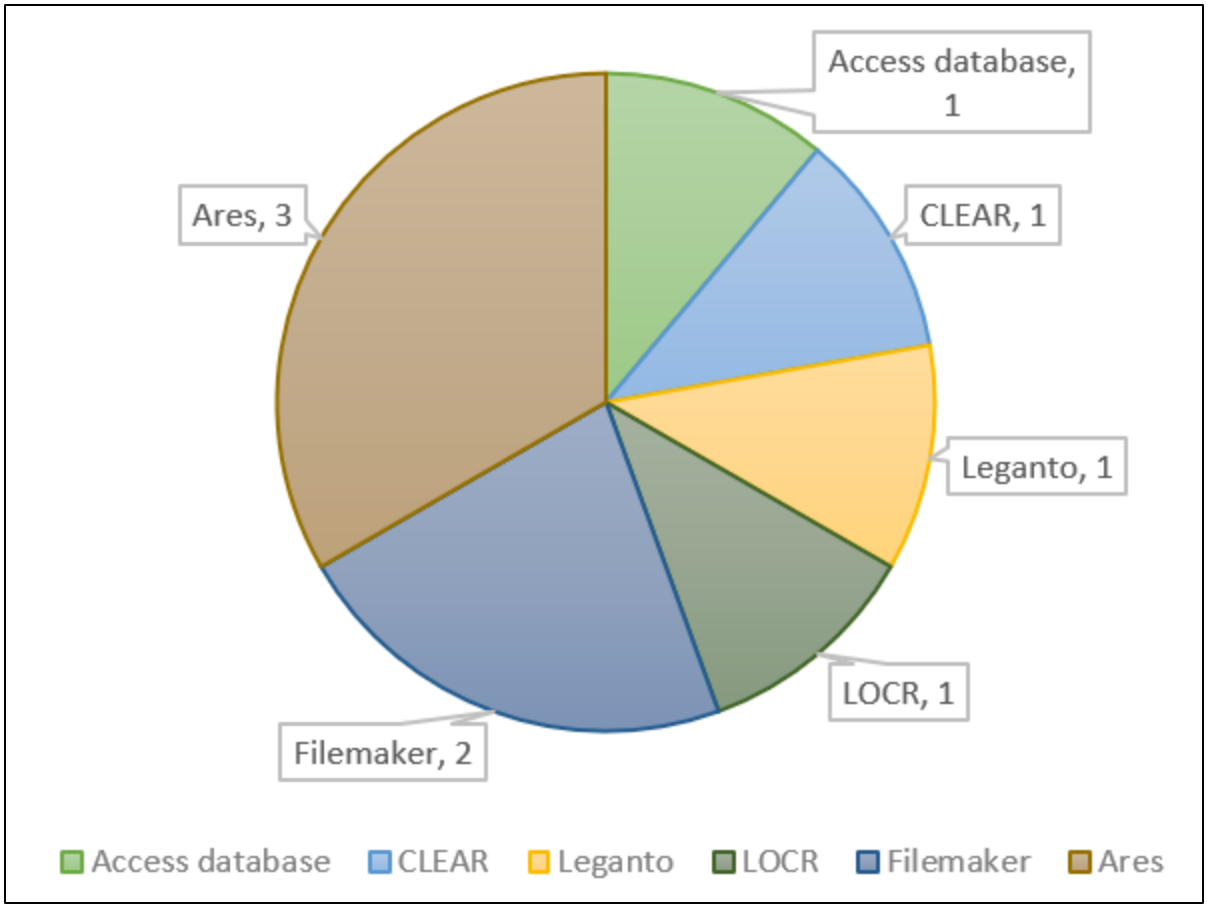

Figure 10
Application or platform used for permissions or licensing management, 2020 (n=9).

Permission Sources

Another question unique to the 2020 survey asked respondents how often their institution relied on particular sources for permissions clearance in a 12-month period. Of sources relied on "Very Often," the top three were library licensed databases (so identified by about 78% of respondents), followed by fair dealing (46%) and users' rights for educational institutions (31%) (Figure 11).

When responses to the same question were sorted by sources relied on "Often," the top three sources were open licensing (44%), user's rights for educational institutions under the *Copyright Act* (39%) and fair dealing under the *Copyright Act* (32%). In addition, more than two-thirds of respondents indicated that a blanket institutional copying license was "Never" relied on for permissions and more than 30% of respondents said their institution "Rarely" relied on permission granted without payable fees and on transactional licenses for business cases.

Transactional Licensing Costs

For the first time in the 2020 survey, we asked respondents how their institutions cover transactional licensing fees for reproduction or distribution of excerpts such as book chapters as well as business cases (Figure 12). They were invited to choose as many of the five listed options as were applicable at their institution. A total of 37 respondents answered the questions on licensing costs by making 61 response

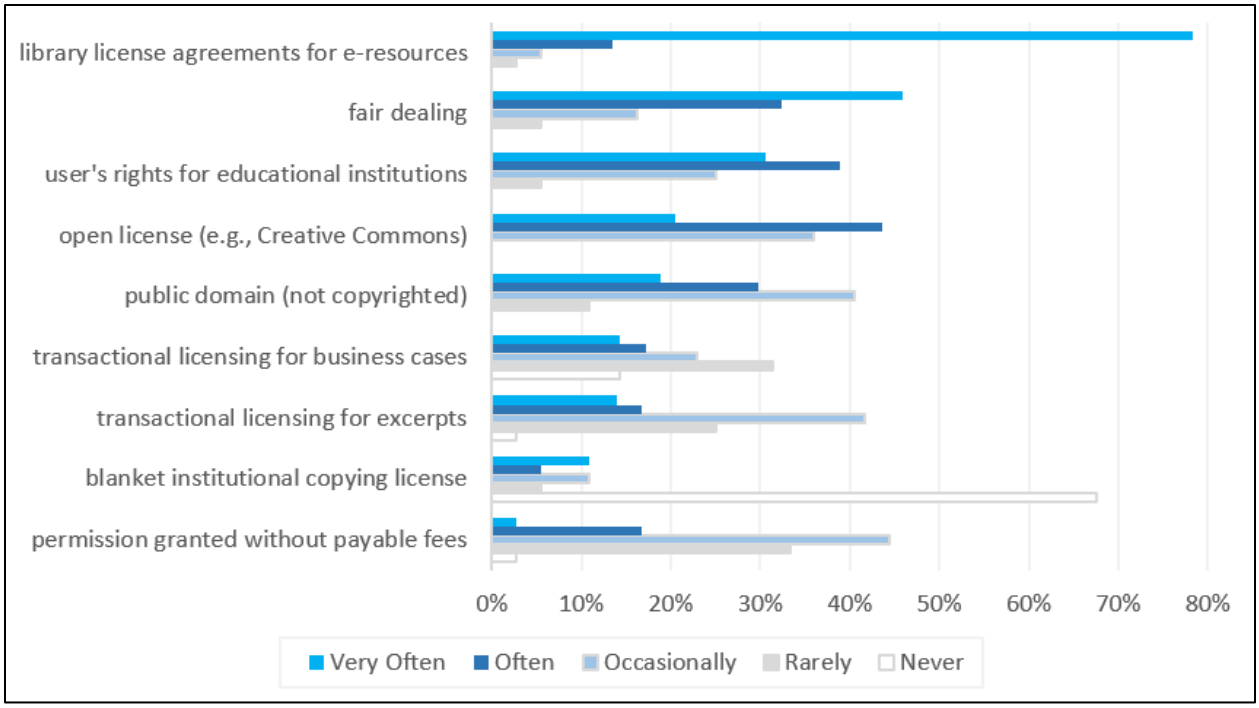

Figure 11
Permission sources relied on, sorted by "Very Often," 2020, n=39.

selections for book chapters and 54 response selections for business cases.

For book chapters, the most frequent response was coverage by a centralized fund (33%) followed by indirect cost recovery via fees charged to students by the bookstore (25%). In contrast, the most frequent response for business cases were fees charged directly to students (24%) followed by "other" (22%).

Explanations offered for a response of "other" to the question regarding business cases included uncertainty about how fees are covered and indications that such fees are covered by the business school. Other explanations described situation-dependent approaches. An example provided by one respondent is that students pay permission fee costs directly unless a case is used in a seminar, in which case the business school covers the fees.

Respondents provided fewer explanations when they chose "other" in response to the question about licensing fee coverage for excerpts such as book chapters. In general, however, the explanations ranged from indications of case-by-case decisions to statements that the requesting department or unit is responsible for permissions and licensing fees.

Copyright Compliance in the LMS

The majority (75%) of the 36 respondents who answered the compliance monitoring question indicated their institution does not have a regularly conducted process for monitoring copyright compliance in the LMS. A few (8%) responded affirmatively and several comments that accompanied responses of "other" (17%) mentioned the availability of informal or on-request review processes.

Three survey participants responded to questions about their institution's process of monitoring compliance in the LMS. They indicated it takes place collaboratively with the library or copyright office and one or more of

the following additional campus units: information technology, legal counsel, copyright committee, faculty association. All three indicated monitoring compliance is conducted by the copyright office or copyright coordinator and involves between 5% and 50% of the work hours of the responsible office or position.

Regarding the extent to which faculty are involved in ensuring compliance in the LMS, one respondent said their institution asks faculty to provide copyright staff with course materials not posted on the LMS along with any permissions obtained by faculty. Another respondent said random surveys are employed, and the third indicated that instructors are responsible for ensuring copyright compliance of materials used in the LMS. As for the usual process for monitoring LMS copyright compliance, all three responses indicated a random sampling approach is used.

Participants who said no LMS compliance monitoring was currently in place were asked if their institution had plans to implement a formal monitoring process in the near future. Of the 27 responses received, 52% said no, 11% said yes, and 37% chose "other." Of those who chose "other," about half indicated that development of a monitoring process is a potential option or is under discussion.

Additional Comments

In response to the 2020 survey's concluding invitation to provide any further comments on copyright compliance or copyright management in general, the following topics were mentioned:

- promotion of links and suggestions for e-book purchases in lieu of reproduction or distribution of protected works
- intention to promote OER materials more strongly
- existence of, or plans to introduce, a formal statement of responsibility regarding copyright compliance in the LMS
- desire for more staff to assist with copyright matters or development of a more regularized, proactive approach

Discussion

The INDU report on the first statutory review of Canada's *Copyright Act* expressed concern that "despite the volume and diversity of evidence submitted throughout the review, the Committee observed a problematic lack of authoritative and impartial data and analysis on major issues" (Canada, House of Commons, Standing Commmittee on Industry, Science and Technology, 2019, p. 25). As one way of alleviating the problem of unreliable data, recommendation 4 of the report suggested that Statistics Canada be mandated to collect authoritative data on the economic impacts of copyright law on Canadian creators and creative industries (2019, p. 25).

While our 2020 survey results may not align with the kinds of systematically and comprehensively gathered data the INDU Committee had in mind, our aim was to shed light on current day-to-day copyright practices of Canadian post-secondary institutions and what may have changed in those practices over the past five years. In this section we consider the extent to which the results of our survey may alleviate some data gaps by providing updated information on what actually happens within the realm of educational copying on higher education campuses across Canada as reported by staff responsible for copyright at their institutions.

Survey Participation

By the mid-February closing date, our 2020 survey had achieved a 33% participation rate, representing just over half of the 61% participation rate attained in the 2015 survey. About one month later, closure of Canadian

post-secondary institutions commenced in what would become a more than year-long period of delivering almost all classes online due to the COVID-19 pandemic (e.g., Canadian Press, 2020; Small, 2020). Had the pandemic closures and disruptions not occurred, we would likely have considered seeking research ethics approval to reopen the survey later that year to encourage more survey completions. This is a step we took in our 2015 survey due to a similar low response rate on the initial closing date (Graham & Winter, 2017).

The switch from in-person to online delivery of classes for the latter half of the winter 2020/spring 2021 term precipitated by COVID-19 closures raised many copyright-related issues needing to be addressed quickly. Our copyright roles at our respective institutions meant we had little time to devote our survey research until fall 2020, when high levels of stress and uncertainty continued to permeate the daily life of post-secondary students and staff, creating an inauspicious environment in which to seek additional responses by reopening the survey. Thus, due to a significantly lower response rate, the 2020 results may not be as representative of copyright practices across Canadian post-secondary institutions as the results of the 2015 survey.

We were successful in achieving participation from a wider mix of types of institutions than those included in the 2015 survey, however. All five academic library consortia included in the distribution of the 2020 survey were represented in the survey results, which included seven respondents from CLO, the only consortium composed entirely of colleges and institutes. As the member institutions of the other four library consortia included in the 2020 survey were exclusively or predominantly universities, the majority of 2020 respondents were from Canadian universities, as was the case in the 2015 survey.

Areas of Continuity

For the 2020 survey we retained most of the questions included in the 2015 survey, which allowed us to compare the results of the two surveys to look for patterns suggesting stability or change. Copyright education topics and methods, copyright policy, and permissions licensing are three areas of practice in which we perceived significant levels of continuity to be evident between 2015 and 2020.

Education Topics and Methods

The results of both surveys suggest that the methods used to provide copyright education and the topics covered in copyright education for users remained, on the whole, quite similar. Fair dealing and other statutory user rights remained the most frequently addressed topics. A slight change occurred in the topics covered in copyright education for creators, with the ordinal position of the 2015 top two topics ending up reversed in 2020. The top two topics of copyright creator education in 2020 were negotiating publisher contracts or addenda, followed by owner/creator rights. These findings on the topics most frequently covered in copyright education for users and creators align with the results of the study by Fernández-Molina et al. (2020) on copyright services and staffing at a selection of international universities.

Copyright Policy

The existence of institutional copyright guidelines or policy was confirmed by just over 80% of the 2015 respondents, while the confirmation level rose to above 90% among 2020 respondents. This finding suggests a strengthened commitment to upholding the rights granted under the *Copyright Act* throughout the post-secondary sector. A single 2020 survey respondent said their institution did not have a copyright policy, compared with

eight participants in the 2015 survey who responded to this question in the negative.

Permissions and Content Delivery Modes

Within the 2015 and 2020 survey results, we noticed similar patterns in the locus of responsibility for copyright permissions and licensing work which continued to be performed mainly by library and copyright office staff. In 2020, the copyright office played the lead role in clearing permissions for three of the four content delivery modes explored—the LMS, e-reserve, and coursepacks. The one exception was the library's lead role in permissions work for materials placed on reserve.

When respondents answered "not applicable" to any of the questions on responsibility for permissions clearance for a particular content delivery mode, we took this to be an indication that the institution most likely did not use that delivery mode. With this understanding in mind, comparisons of responses from both surveys suggest that from 2015 to 2020, the availability of e-reserve as a delivery mode option declined slightly and institutional reliance on content delivery via an LMS increased slightly. In fact, it is possible that by 2020, all survey participants were using an LMS, as no respondent said permissions clearance for materials distributed via the LMS was "not applicable."

Similar response patterns to the questions probing whether library licenses are considered during permissions work suggest that library licensing continues to play a key role in institutional management of copyright. For content delivered via coursepacks produced in-house, LMS, and reserve, responses to both surveys indicated the applicability of library licenses was checked at more than half of participating institutions. For e-reserve content, the proportion who indicated permissions work included consideration of library licensing dipped below half of the respondents in 2020, but may be due, at least in part, to the slight increase in the proportion of institutions that we infer did not offer e-reserve service.

Areas of Change

Changes in some areas of post-secondary copyright practices appear to have evolved between 2015 and 2020, in a few cases perhaps reflecting key events that unfolded within this timeframe. The locus of these observed shifts in copyright practices occurred in the extent to which responsibility for copyright was held by senior administrative positions, the prevalence of blanket collective licensing, and approaches to copyright education.

Executive Responsibility for Copyright

Between 2015 and 2020, the level of central administration involvement in copyright matters declined even further. In response to the question about the institutional office or position title responsible for copyright, the proportion of 2020 respondents who named an executive or second-tier executive position fell by about 9% with a corresponding increase in the proportion naming an office or position that included the term "copyright". This finding extends a trend first observed in our 2015 survey, which, in turn, followed up on a 2008 survey by Horava (2010).

In the area of policies pertaining to copyright owners, central administration held this responsibility in 2015 at about one-third of responding institutions but by 2020, central administration's role was significantly diminished, as it was named as the responsible unit at less than one-fifth of institutions. Similarly, central administration was named as the unit responsible for blanket licensing decisions by half of 2015 respondents, but this fell to fewer than one-third of respondents to the 2020 survey.

In most cases, the shift away from executive responsibility for copyright was counterbalanced chiefly by responsibility more frequently held by copyright or library staff. For

example, by 2020, the library was the unit most often named as holding responsibility for blanket licensing, and the library or copyright office was named as the responsible unit for blanket licensing by about three-fifths of participating institutions. This finding suggests that over the period spanning 2015 to 2020, significant specialization and maturation of copyright expertise and knowledge has taken place within the library or copyright office across Canadian post-secondary institutions.

Approaches to Copyright Education

Although the topics covered and methods used in copyright education for users and creators remained similar in 2015 and 2020, more than half of the respondents to the 2020 survey said significant changes had occurred in how their institution addressed copyright education. Written responses explaining those changes mentioned growing institutional awareness of alternatives to traditional commercially published works such as OERs, increased focus on using institutional site licenses to online content, adaptation to operating outside of blanket collective licensing, and greater integration of copyright staff in institution-wide concerns such as scholarly communication.

Participation in Blanket Collective Licensing

In April and May, 2012, new model blanket copying licenses were successfully negotiated by AC and two associations representing Canadian universities, colleges, and institutes at a time of great uncertainty about how the SCC would rule in the fair dealing case involving AC and K-12 schools outside of Quebec (Access Copyright, 2012a, 2012b). As things turned out, the SCC judgment was released in July 2012 shortly after a number of institutions had signed up for the AC blanket license (*Alberta (Education) v Access Copyright*, 2012). The 2015 survey revealed that just over half of responding institutions held an AC blanket license that would expire at the end of 2015.

In contrast, more than three-quarters of institutions participating in the 2020 survey indicated they did not hold a blanket license. This strongly suggests that by 2020, most post-secondary institutions outside of Quebec did not find sufficient value in blanket collective licensing. Confirmation from the SCC that Copyright Board-approved tariffs do not bind institutions to pay tariff fees if they use even a single work within a collective society's repertoire (*York University v Access Copyright*, 2021) means institutions remain free to determine how best to ensure that their educational copying complies with Canadian copyright law, which may or may not involve blanket licensing.

New Areas Explored

We introduced some additional questions in the 2020 survey that looked at three broad areas: copyright staffing, management of permissions clearance processes, and compliance monitoring in the LMS. Information gleaned in these areas help to enrich our understanding of current institutional copyright management practices and operations.

Copyright Staffing

The 2020 survey responses indicated that although the number of staff having copyright responsibilities at Canadian post-secondaries varied widely, the largest proportion of institutions had fewer than two staff who were responsible for copyright services and the median number of copyright staff was two. Institutional size was not always a predictor of the number of copyright staff, however, as one large institution (> 25,000 FTE) reported having only a single person responsible for copyright while at the opposite end of the spectrum, one small institution (< 10,000 FTE) said 10 staff were involved in providing copyright services.

Managing Permissions Clearance

As we received only nine responses to the question that asked if software applications or platforms are used in permissions work, the extent to which post-secondaries have adopted tools specifically designed for this activity remains uncertain. The responses we did receive suggest that the tools for managing various aspects of permissions work in use in 2020 included a mix of commercially available permissions management tools, locally developed tools, and common office productivity applications.

Library licenses were, by far, the permissions source most frequently relied on "very often" by more than three-quarters of survey participants. This finding corroborates what many post-secondary institutions and research organizations told the INDU Committee via witness testimony and submitted briefs during the 2017 *Copyright Act* review regarding the central importance of institutional site licenses. Such site licenses are negotiated directly with rights owners for online access to scholarly content and obviate the need for mediation by copyright collectives (e.g., Canadian Association of Research Libraries, 2018; Canadian Association of University Teachers, 2018).

Fair dealing was the permissions source next most frequently relied on "very often" by close to half of respondents. The SCC decision in the case launched by AC in 2013 provides robust reassurance that fair dealing truly is a user's right available to all students (*York University v Access Copyright*, 2021). As the SCC noted in its unanimous judgement,

> contrary to the Federal Court of Appeal's view, in the educational context it is not only the institutional perspective that matters. When teaching staff at a university make copies for their students' education, they are not "hid[ing] behind the shield of the user's allowable purpose in order to engage in a separate purpose that tends to make the dealing unfair" (2021, para 102).

Largely on the basis of this principle, the SCC drew the following conclusion:

> It was therefore an error for the Court of Appeal, in addressing the purpose of the dealing, to hold that it is only the "institution's perspective that matters" and that York's financial purpose was a "clear indication of unfairness" . . . . Funds "saved" by proper exercise of the fair dealing right go to the University's core objective of education, not to some ulterior commercial purpose (2021, para 103).

In light of the pivotal 2021 SCC ruling and the fact that the period of AC blanket licensing within the public education sector spanning the 1990s and 2000s was founded on an agreement to disagree about the scope and applicability of fair dealing to educational copying (Graham, 2016, p. 337), perhaps we will see greater use of fair dealing—an "always available" user's right (*CCH v LSUC*, 2004, para 49)—as a statutory source of permissions clearance by post-secondary institutions in the future. After all, a mere one-tenth of 2020 respondents said they relied "very often" on blanket collective licensing in permissions work.

Another permissions-related issue included for the first time in the 2020 survey asked how transactional licensing costs are covered for excerpts such as book chapters and business cases. We included separate questions about these two kinds of course materials because while many book publications fall within the repertoire of works for which AC offers blanket licensing, as far as we are aware, commercially published business cases from organizations such as Ivey Publishing and Harvard Business Publishing have never been part of any repertoire covered by blanket collective licensing in Canada.

The survey results revealed no single dominant means of covering transactional licensing costs. About one-third of the 37 participants who answered these two questions indicated their institution uses multiple methods (respondents were invited to indicate all approaches that applied). The most frequent responses were a centralized fund for book chapters and directly charging permission fees to students for business cases. The finding that institutions use a variety of ways to manage licensing costs underlines a general observation that no single approach (such as blanket collective licensing) is likely to be an effective or efficient way of addressing the copyright compliance and management needs of all Canadian post-secondary institutions.

Compliance Monitoring

Although only three respondents said their institution had implemented a process for regular monitoring of copyright compliance in the LMS, there were commonalities across the responses in terms of how the process is structured, which units are responsible for leading the activity, and the involvement of several other campus units or offices. At institutions currently without a monitoring process, about half of the respondents indicated there were no plans to introduce one in the future.

That a "substantial shift to digital content" (Canada, House of Commons, Standing Commmittee on Industry, Science and Technology, 2019, p. 58) has taken place within higher education is noncontroversial. But many witnesses from the Canadian publishing sector alleged that post-secondary institutions engage in inappropriately uncompensated "mass and systematic use of their works" (Canada, House of Commons, Standing Commmittee on Industry, Science and Technology, 2019, p. 57), while educational institutions "denied claims of rampant copyright infringement" (Canada, House of Commons, Standing Commmittee on Industry, Science and Technology, 2019, p. 60), instead arguing that most of their uses of protected works are copyright compliant.

As the LMS had become an essential teaching and learning tool even before COVID-19 (Peters, 2021), it represents the space in which the publishing sector alleges wide-spread copyright infringement uses take place, out of view to all except instructors and their students. The INDU Committee noted the lack of reliable data makes it "difficult to determine whether the education sector has adopted adequate measures to prevent and discourage copyright infringement" (Canada, House of Commons, Standing Commmittee on Industry, Science and Technology, 2019, p. 64).

Given the SCC's reconfirmation that proper fair dealing analyses are no longer to be guided by earlier "author-centric" approaches focusing on "the exclusive right of authors and copyright owners to control how their works [are] used in the marketplace" (*York University v Access Copyright*, 2021, para 90), the time may now be ripe for Canadian post-secondary institutions to review their fair dealing guidelines and policies to ensure they align with the SCC's most recent guidance. Institutions may also consider ways in which they can collaborate to assemble "new and authoritative information" (Canada, House of Commons, Standing Commmittee on Industry, Science and Technology, 2019, p. 65) about their educational copying that upholds principles of academic freedom, privacy and confidentiality, as well as evidence-based professional practice.

Conclusion

Copyright continues to be a public policy matter that is in considerable flux in Canada and around the world. Canadian post-secondary institutions have been acutely aware of, and in some cases, have actively participated in, major events that have unfolded in the copyright sphere in the past five years. Some of those events have spotlighted long-held, strongly

divergent views on the fundamental purpose of copyright and the scope and appropriate application of educational fair dealing, which, in turn, have had implications for the copyright practices of Canadian post-secondary institutions.

The survey we conducted in early 2020 provided an updated understanding of where responsibility for various copyright services and decision-making processes lies across Canada's universities, colleges and institutes. It also further illuminated some specific areas of practice, policy, and management including copyright education, participation in collective blanket licensing, permissions assessment processes, and copyright staffing complements.

Our study results suggest that since 2015, continued consolidation has taken place in the locus of copyright expertise on post-secondary campuses. Aspects of our new findings were likely influenced not only by developments in the educational copying environment that have been taking shape over the past decade, but also by growing interest in open educational resources and open access to the scholarly literature which have gained prominence over the past five years within the scholarly communications ecosystem.

Some limitations identified in our 2015 study remain applicable to the present study. For example, due to the nature of survey-based research, the 2020 survey provides only a snapshot of institutional practices at a single point in time. As well, the extent to which the study has yielded a representative indication of copyright practices across Canadian post-secondary institutions is not as strong we had hoped for, due to the lower than desired response rate, which was impacted by the unforeseen arrival of the COVID-19 pandemic and subsequent major disruptions.

Fruitful areas for future exploration that could potentially build on our research and those of others (e.g., Fernández-Molina et al., 2020; Patterson, 2017) include closer examinations of copyright staff profiles and the nature of shared institutional responsibility for copyright-related services, operations, policies, and decision-making processes. Copyright practices of post-secondary institutions will undoubtedly continue to evolve and respond to changes in case law, copyright legislation, and the ways in which information sources needed by students and researchers are created, made available, and used.

We are hopeful that the crucially important SCC judgment (*York University v Access Copyright*, 2021) confirming the voluntary nature of blanket collective licensing and the Court's prior guidance on the scope and proper assessment of fair dealing in post-secondary settings provides a solid legal foundation on which to refine robust, copyright-compliant practices going forward.

Author Contributions

Rumi Graham: Conceptualization, Formal analysis, Writing – review & editing, Investigation, Methodology, Funding acquisition. **Christina Winter:** Conceptualization, Formal analysis, Writing – review & editing, Investigation, Methodology, Funding acquisition.

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Appendix A
Copyright Developments, 2015-2020

Copibec v. Laval

In 2016, the Quebec Superior Court declined a motion from the Société québécoise de gestion collective des droits de reproduction (Copibec) to authorize a class action against Université Laval for alleged copyright infringement while operating outside of a blanket license (*Société québécoise de gestion collective des droits de reproduction v Université Laval*, 2016). A year later, the Quebec Court of Appeal (QCA) authorized Copibec's class action by overturning the lower court's decision. The QCA ruling thus comprised the first step in a class action proceeding (*Société québécoise de gestion collective des droits de reproduction v Université Laval*, 2017).

The class action did not proceed, however, as the parties settled the disagreement out-of-court (Copibec, 2018a). Details of the settlement agreement included suspension of Université Laval's copyright policy and guidelines, retroactive payment for a copying licence covering 2014-2017, Laval's return to province-wide post-secondary blanket licensing, and additional payments by Laval for infringement of moral rights and other fees (Copibec, 2018b). This settlement thus marked a return to the status quo throughout the Quebec educational copying environment, with all post-secondary institutions operating under a blanket collective license.

AC v. York

Canada's Federal Court (FC) delivered its decision in the AC and York University (York) case on July 12, 2017 after a 19-day hearing that took place over May and June 2016 (*Access Copyright v York University*, 2017). The two key matters at issue were whether it was mandatory for York to operate under the approved interim tariff and whether copying by York under its fair dealing guidelines was lawful under the provisions of the *Copyright Act*. The FC decision found in favour of AC on both matters. On the mandatory tariff question, the FC said "the Interim Tariff is mandatory and enforceable against York. To hold otherwise would be to frustrate the purpose of the tariff scheme of the Act . . . and to choose form over substance" (2017, para 7). On York's fair dealing guidelines, the FC said "York's own Fair Dealing Guidelines . . . are not fair in either their terms or their application. The Guidelines do not withstand the application of the two-part test laid down by Supreme Court of Canada" (2017, para 14).

York v. AC Appeal

Both York and AC appealed the 2017 FC decision to the Federal Court of Appeal (FCA). Following a two-day hearing in March 2019, the FCA released its decision on April 22, 2020 (*York University v Access Copyright*, 2020). The FCA ruled against AC by overturning the FC ruling on the mandatory effect of approved tariffs. The FCA's extensive review of the legislative history of the *Copyright Act*'s licensing and tariff regimes and relevant case law led the Court to conclude that

> the fact that the collective society/tariff regime is a means of regulating licensing schemes which, by definition, are consensual. . . . [and] continuous references to licensing schemes and the retention of the key elements of the 1936 Act leave little doubt that tariffs are not mandatory which is to say that collective societies are not entitled to enforce the terms of their approved tariff against non-licensees (2020, para 202).

On the issue of the fairness of York's fair dealing guidelines, however, the FCA ruled against York by upholding the FC finding of unfairness. The FCA's conclusion was that "York has not shown that the Federal Court erred in law in its understanding of the relevant factors or that it fell into palpable and overriding error in applying them to the facts" (2020, para 312).

York v. AC Appeal to the Supreme Court

A third and final chapter of the tariff/fair dealing dispute between AC and York opened with both parties seeking leave to appeal to the Supreme Court of Canada (SCC), which was granted to both parties in October 2020 (Supreme Court of Canada, 2020). Following a half-day hearing in May 2021, the SCC released its unanimous judgment a mere two months later on July 30, 2021 (*York University v Access Copyright*, 2021). On the key question of whether it is mandatory for York and other post-secondary institutions to pay tariff fees if they copy any materials in AC's repertoire, the SCC dismissed AC's appeal, thereby upholding the FCA decision that tariffs are not mandatory.

Among other things, the SCC noted that

> Access Copyright's interpretation of s. 68.2(1) is not only unsupported by the purpose of the [Copyright] Board's price-setting role, it is, respectfully, also in direct conflict with that purpose. Instead of operating as a part of a scheme designed to control collective societies' potentially unfair market power, Access Copyright's interpretation would turn tariffs into a plainly anti-competitive tool, boosting collective societies' power to the detriment of users (2021, para 71).

The SCC declined to grant York's request for a declaration regarding its fair dealing guidelines because the determination that tariffs are not enforceable on non-licensees meant there was no live issue between the parties. The SCC agreed with York, however, that institutional guidelines are an important way to help students actualize their fair dealing rights. The SCC further noted that it did not endorse the fair dealing analyses conducted by the FC and FCA and offered the following corrections to the reasoning from those courts.

- Throughout their fairness analyses, the FC and FCA incorrectly adhered to an institutional perspective—York's purported commercial purpose—without proper regard for fair dealing as a component of user's rights that are integral to copyright's balance between private and public interests. The SCC affirmed that "a proper balance ensures that creators' rights are recognized, but authorial control is not privileged over the public interest" (2021, para 93).
- Regarding their assessment of the "purpose" fair dealing factor, both courts repeated the same error made by the Copyright Board when it distinguished between the purposes of teachers and their students, which the SCC had corrected in an earlier decision (*Alberta (Education) v Access Copyright*, 2012). The SCC reiterated that "the purpose of copying conducted by university teachers for student use is for the student's education" (2021, para 103).
- The FC's assessments of the "amount" factor was incorrect when it criticized York's guidelines on the basis that they allow different excerpts of a work to be used by different groups of students such that in the aggregate, the whole work could be used. The SCC stated the FC should instead have followed the guidance offered on this matter in its earlier ruling (*Alberta (Education) v Access Copyright*, 2012).

- The FC's assessment of the "character" factor was also incorrect in that it overlooked the guidance in *SOCAN v Bell,* (2012) that large-scale, systemic dealings are not inherently unfair. In their 2021 ruling, the SCC noted that "the character of the dealing factor must be carefully applied in the university context, where dealings conducted by larger universities on behalf of their students could lead to findings of unfairness when compared to smaller universities. This would be discordant with the nature of fair dealing as a user's right" (2021, para 105).

Post-Secondary Copying Tariffs

A development closely related to the AC and York case was the Copyright Board's long-awaited certification of two AC post-secondary tariffs in 2019 (Copyright Board of Canada, 2019). AC had filed its first proposed tariff for post-secondary institutions in March 2010 covering the period from 2011-2013 (Copyright Board of Canada, 2010), followed three years later by a second post-secondary tariff proposal for 2014-2017 (Copyright Board of Canada, 2013). The Copyright Board consolidated its approval process for AC's first two proposed post-secondary tariffs in July 2015. The Copyright Board hearing in January 2016 involved AC and only a single individual intervenor, as all other parties and intervenors had withdrawn from the tariff approval proceedings (Copyright Board of Canada, 2019, p. 5).

The royalty rates set by the Copyright Board for 2011 to 2014 and 2015 to 2017 were based on licenses offered by AC to universities and colleges during these two time periods, which the Board used as proxies for the market value of AC's licenses (2019, p. 2). One issue considered by the Board was the "legal landscape respecting the notion of fair dealing as it applies to the education sector" (2019, p. 34). Despite AC's contention that educational institutions had misinterpreted how fair dealing may apply to educational copying, the Board deemed it unnecessary to assess the role of fair dealing since the two licenses used as proxies "already incorporate a market-generated allowance for the current instability surrounding the fair dealing landscape" (2019, p. 35).

Review of the Copyright Act

Another major development in the Canadian educational copying environment was the 2017 statutory review of the *Copyright Act*. Conducted over 2018 and first half of 2019 by the House of Commons Standing Committee on Industry, Science and Technology (INDU), the review was mandated by amendments passed in 2012 (*Copyright Modernization Act*, 2012). In their mandate letter to the Chair of the INDU Committee, the Minister of Innovation, Science and Economic Development and Minister of Canadian Heritage acknowledged that "market disruption has often driven copyright reform," but went on to note, "we respectfully suggest that the *Copyright Act* itself might not be the most effective tool to address all of the concerns stemming from recent disruptions" (Bains & Joly, 2017).

During the statutory review of the *Act*, the INDU Committee solicited broad stakeholder feedback through a series of nation-wide public consultations, in-person witness presentations, and written briefs. The library and education sectors were actively engaged in this process. Through their analyses of written briefs submitted to the INDU Committee as part of the statutory review, Savage and Zerkee (2019) found that the post-secondary education sector submitted the highest proportion (42%) of all submitted briefs.

The review process culminated in June 2019 with the release of the INDU report containing 36 recommendations (Canada, House of Commons, Standing Commmittee on Industry, Science and Technology, 2019). Feedback on the report from educational and cultural stakeholder groups was mostly favorable regarding the extent to which it balanced the needs of creators and users (e.g., Canadian

Association of Research Libraries, 2019; Canadian Council of Archives et al., 2019; Canadian Federation of Library Associations/Fédérations canadienne des associations de bibliothèques, 2019). Reactions to the report from copyright collectives tended to be less enthusiastic, however (e.g., Access Copyright, 2019; Music Canada, 2019).

Invited by the INDU Committee to contribute to the statutory review, in March 2018 the House of Commons Standing Committee on Canadian Heritage (CHPC) commenced a study of thremuneration models for artists and creative industries. The CHPC study used an information-gathering process similar to that employed by INDU but was more narrowly focused in scope. In June 2019, the CHPC Committee independently released the results of its investigations, which included 22 recommendations (Canada, House of Commons, Standing Committee on Canadian Heritage, 2019).

In the end, the INDU and CHPC statutory review reports reached divergent conclusions on a number of issues. For example, the INDU Committee said it "cannot endorse the proposal to limit educational fair dealing to cases where access to a work is not 'commercially available,' as defined under the Act" (Canada, House of Commons, Standing Commmittee on Industry, Science and Technology, 2019, p. 64), whereas the CHPC Committee's recommendation 18 proposes that the "Government of Canada amend the Act to clarify that fair dealing should not apply to educational institutions when the work is commercially available" (Canada, House of Commons, Standing Committee on Canadian Heritage, 2019, p. 43). Both reports were presented to Parliament, but no actions were undertaken before Parliament was dissolved just prior to the 2019 Canadian federal election.

Copyright Term Extension

The last development in the copyright realm of particular note was trigged by a fall 2018 agreement reached by Canada, the U.S., and Mexico to replace the 1994 North American Free Trade Agreement with a new agreement known in Canada as CUSMA (Canada et al., 2018). In the new agreement which came into force in July 2020, the chapter dealing with intellectual property rights contains a requirement in section H, Article 20.63 stating that:

> Each Party shall provide that in cases in which the term of protection of a work, performance, or phonogram is to be calculated: (a) on the basis of a natural person, the term shall not be less than the life of the author and 70 years after the author's death" (Canada et al., 2018, p. 20-33).

Since Canada is the only contracting party to CUSMA whose current copyright laws do not already provide a general term of copyright protection that is at least life plus 70 years, Canada must implement a 20-year extension to its current term of copyright—life plus 50 years—which is the minimum term of protection specified in the Berne Convention (1886). In March 2021, the Government of Canada released a consultation paper and invited comment on how best to meet its copyright term extension obligations (Innovation Science and Economic Development Canada, 2021). It is notable that the 2019 *Copyright Act* review reports prepared by INDU and CHPC contain contrasting recommendations on the term of copyright:

> INDU Report Recommendation 6: That, in the event that the term of copyright is extended, the Government of Canada consider amending the *Copyright Act* to ensure that copyright in a work cannot be enforced beyond the current term unless the alleged infringement occurred after the registration of the work (Canada, House of Commons, Standing Commmittee on Industry, Science and Technology, 2019, p. 4).

> CHPC Report Recommendation 7: That the Government of Canada pursue its commitment to implement the extension of copyright from 50 to 70 years after the author's death (Canada, House of Commons, Standing Committee on Canadian Heritage, 2019, p. 1).

Many Canadian post-secondary institutions and educators believe that copyright term extension does not further the purpose of copyright as it provides no additional incentives to create new works (e.g., Canadian Association of Research Libraries, 2018; Canadian Association of University Teachers, 2018). Term extension can also hinder educational efforts that are dependent on public domain works (Geist, 2017). Additionally, an examination of what happens when books enter the public domain in Australia, New Zealand, the U.S., and Canada found that "where copyright has been extended, libraries are being obliged to pay higher prices in exchange for worse access" (Flynn et al., 2019, p. 1246). Thus, to maintain copyright's balance between public and private interests, it is essential for term extension implementation to include adequate measures to offset repercussions that would otherwise adversely affect the ability of educators and students to access copyrighted works.

Appendix B
2020 Survey Questions

Copyright Practices and Approaches at Canadian Post-Secondaries:
An Expanded Follow-up National Survey

Introduction

1. In which consortium is your institution a member?
    a. Council of Atlantic University Libraries
    b. Bureau de Coopération Interuniversitaire
    c. Ontario Council of University Libraries
    d. Council of Prairie and Pacific University Libraries
    e. College Libraries Ontario

2. What is the approximate size of your institution?
    a. Very Small (up to 2,000 FTE)
    b. Small (2,001 to 10,000 FTE)
    c. Medium (10,001 to 25,000 FTE)
    d. Large (25,001+ FTE)

3. What is the title of the position or office responsible for copyright at your institution?
    a. University Librarian/Library Director
    b. Copyright Advisor
    c. Copyright Coordinator
    d. Copyright Librarian
    e. Copyright Manager
    f. Copyright Officer
    g. Copyright Specialist
    h. Other (please explain)

Responsibility for copyright

4. At your institution, which position(s), department(s) or office(s) are responsible for the following activities associated with copyright? If responsibility is shared, please indicate the position, department or office of all that are involved. If an activity is not applicable, please enter "n/a".
    a. education on the use of copyrighted materials
    b. education on exercising and protecting owner rights under the Copyright Act
    c. permissions clearance for coursepacks produced by your institution (print or electronic)
    d. permissions clearance for works made available on library reserve (print)
    e. permissions clearance for works made available on library reserve (electronic)
    f. permissions clearance for works used in your institution's learning management system
    g. decisions on blanket licensing matters
    h. development of institutional policies for users of copyrighted materials
    i. development of institutional policies for copyright owners of copyrighted materials

5. What is the approximate number of staff involved in to providing copyright assistance or services at your institution? [Comment box: Please explain]

Copyright education

6. What are your institution's main methods of providing copyright education
    a. for users of copyrighted materials?
    b. for creators of copyrighted materials?

7. What are the topics most frequently covered in copyright education
    a. for users of copyrighted materials?
    b. for creators of copyrighted materials?

8. Over the past five years, have there been significant changes in how copyright education is addressed at your institution?
    a. Yes (please briefly explain)
    b. No

9. What, if any, are some ways in which the usefulness of your institution's copyright education efforts could be enhanced?

Copyright policy

10. Does your institution have policies or guidelines on copyright?
    a. Yes [Please explain]
    b. No

11. [If you responded Yes to Question 10 Please provide the following information for your institution's copyright policy:
    a. specific issues addressed in the policy
    b. date of establishment
    c. most recent revision date, if applicable
    d. main areas revised, if applicable
    e. is the copyright policy publicly accessible?

12. Is your institution presently covered by a blanket license with Access Copyright or Copibec?
    a. Yes
    b. No

13. If you responded Yes to question 12, please indicate the date on which the license was initiated.

14. What, if any, are some ways in which the usefulness of your institution's copyright policies could be enhanced?

Copyright Permissions & Licensing

15. At your institution, is the potential applicability of a library licence for a full-text resource assessed when readings are distributed in the following ways?

a. coursepacks produced by your institution (print or electronic)
    - Yes
    - No
    - Uncertain
    - Not applicable

b. coursepacks produced by a commercial copyshop (print or electronic)
    - Yes
    - No
    - Uncertain
    - Not applicable

c. copyrighted materials used in your institution's learning management system
    - Yes
    - No
    - Uncertain
    - Not applicable

d. copyrighted materials placed on library reserve (print)
    - Yes
    - No
    - Uncertain
    - Not applicable

e. copyrighted materials placed on library reserve (electronic)
    - Yes
    - No
    - Uncertain
    - Not applicable

16. Does your institution use a software application or platform to assist with managing copyright permissions and licensing?
    a. Yes
    b. No
    c. Other (please explain)

17. [If you answered Yes to Question 16] Please identify the application(s) or platform(s) used.

18. How often does your institution rely on the following sources to clear permissions for course materials? 5-point Likert scale: 1 (never) to 5 (very frequently)
    a. fair dealing under the Copyright Act (s. 29 - s. 29.2)
    b. user's rights for educational institutions under the Copyright Act (e.g., s. 29.5, s. 30.04)
    c. library license agreements for full-text electronic resource subscriptions
    d. blanket institutional license from a copyright collective
    e. openly licensed content such as those released under Creative Commons licenses
    f. author or publisher permission granted without payable fees
    g. transactional licensing for use of excerpts such as book chapters
    h. transactional licensing for business cases
    i. public domain (material not protected by copyright)

j. other (please explain)

19. How does your institution cover the cost of transactional licensing for use of excerpts such as book chapters? (choose all that apply)
    a. costs are directly charged to students
    b. costs are indirectly charged to students via student fees
    c. costs are factored into purchase or digital access fees managed by the bookstore
    d. costs are factored into purchase or digital access fees managed by a unit other than the bookstore
    e. costs are covered by a centralized fund managed by a unit such as the library or copyright office
    f. other (please explain)
    g. not applicable at my institution

20. How does your institution cover the cost of transactional licensing for business cases? (choose all that apply)
    a. costs are directly charged to students
    b. costs are indirectly charged to students via student fees
    c. costs are factored into purchase or digital access fees managed by the bookstore
    d. costs are factored into purchase or digital access fees managed by a unit other than the bookstore
    e. costs are covered by a centralized fund managed by a unit such as the library or copyright office
    f. other (please explain)
    g. not applicable at my institution

21. Other aspects of your institution's practices and approaches regarding copyright permissions clearance you wish to comment on?

Copyright Compliance

22. Has your institution formally implemented a regularly conducted process for monitoring copyright compliance in its learning management system (LMS)?
    a. Yes
    b. No
    c. Other (please explain)

23. [If response to question 22 is "yes"] How was the process for monitoring compliance in the (LMS) developed, and by whom?

24. [If response to question 6 is "yes"] Who is responsible for monitoring copyright compliance in your institution's LMS?

25. [If response to question 6 is "yes"] For each position having at least some responsibility for monitoring compliance in the LMS, about what proportion of their normal work hours is taken up with compliance monitoring activities?

26. [If response to question 6 is "yes"] To what extent are instructors of LMS courses involved in the compliance monitoring process?

27. [If response to question 6 is "yes"] Please briefly describe the usual process for monitoring copyright compliance in your institution's LMS.

28. [If response to question 6 is "no"] Does your institution plan to implement a formal compliance monitoring process in the near future?
    a. Yes
    b. No
    c. Other (please explain)

29. Are there other comments you wish to provide on your institution's practices and approaches regarding copyright compliance or copyright management in general?

Appendix C
2015 Survey Questions

Copyright Practices and Approaches at Canadian Universities: A National Survey

Introduction

5. In which consortium is your institution a member?
    a. Council of Atlantic University Libraries
    b. Bureau de Coopération Interuniversitaire
    c. Ontario Council of University Libraries
    d. Council of Prairie and Pacific University Libraries

6. What is the approximate size of your institution?
    a. Small (up to 10,000 FTE)
    b. Medium (10,001 to 25,000 FTE)
    c. Large (25,001+ FTE)

7. What is your position title?
    i. University Librarian/Library Director
    j. Copyright Advisor/Officer
    k. Other (please explain)

Responsibility for copyright

8. At your institution, which position(s), department(s) or office(s) are responsible for the following activities associated with copyright? If responsibility is shared, please indicate the position, department or office of all that are involved. If an activity is not applicable, please enter "n/a".
    a. education on the use of copyrighted materials
    b. education on exercising and protecting owner rights under the Copyright Act
    c. permissions clearance for coursepacks produced by your institution (print or electronic)
    d. permissions clearance for works made available on library reserve (print)
    e. permissions clearance for works made available on library reserve (electronic)
    f. permissions clearance for works used in your institution's learning management system
    g. decisions on blanket licensing matters
    h. development of institutional policies for users of copyrighted materials
    i. development of institutional policies for copyright owners of copyrighted materials

Copyright education

9. What are your institution's main methods of providing copyright education
    a. for users of copyrighted materials?
    b. for creators of copyrighted materials?

10. What are the topics most frequently covered in copyright education
    a. for users of copyrighted materials?
    b. for creators of copyrighted materials?

11. Over the past five years, have there been significant changes in how copyright education is addressed at your institution?
    a. Yes (please briefly explain)
    b. No

12. What are the most significant copyright education challenges at your institution?

Copyright policy

13. Does your institution have a policy or guidelines on copyright?
    c. Yes
    d. No

14. [If you responded Yes to Question 9] Please provide the following information for your institution's copyright policy/guidelines:
    a. specific topic addressed
    b. date of establishment
    c. most recent revision date, if applicable
    d. main areas revised, if applicable
    e. methods for communicating the policy/guidelines to your institution's community

15. Is your institution presently covered by a blanket (Access Copyright or Copibec) licence?
    a. Yes
    b. No

16. Has your institution ever opted out of blanket licence coverage?
    a. Yes (please indicate the opt-out period start and end dates, if applicable)
    b. No

17. What are the most significant copyright policy challenges at your institution?

Copyright Permissions

18. At your institution, is the potential applicability of a library licence for a full-text resource assessed when course readings are distributed in the following ways?
    a. coursepacks produced by your institution (print or electronic)
        - Yes
        - No
        - Uncertain
        - Not applicable
    b. coursepacks produced by a commercial copyshop (print or electronic)
        - Yes
        - No
        - Uncertain
        - Not applicable
    c. copyrighted materials used in your institution's learning management system
        - Yes
        - No
        - Uncertain

- Not applicable

d. copyrighted materials placed on library reserve (print)
    - Yes
    - No
    - Uncertain
    - Not applicable

f. copyrighted materials placed on library reserve (electronic)
    - Yes
    - No
    - Uncertain
    - Not applicable

19. Has your institution developed tools to assist institutional community members in clearing copyright permissions?
    a. Yes
    b. No

20. [If you answered Yes to Question 15] Please identify and briefly describe each permissions clearance tool your institution has developed.

21. What are the most significant copyright permissions challenges at your institution?

22. Are there other comments you wish to provide on your institution's practices and approaches regarding copyright?