

The Canadian University Copyright Specialist: A Cross-Canada Selfie

Erin Patterson, MA, MLIS
Academic Librarian, Acadia University
erin.patterson@acadiau.ca

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Abstract

This article discusses the results of a 2015 study of Canadian university copyright officers, which were presented at the ABC Copyright Conference in Halifax in May 2016. The study's primary aim was to generate a snapshot of this emerging profession. Who are the people occupying copyright positions at Canadian universities? What do they call themselves? What is their academic background? What kind of copyright education and training do they have? Where do they fit into the structure of the organization? The study's secondary aim was to probe the intersection of copyright and academic freedom: not the academic freedom of faculty members in creating and using copyright-protected works, but the academic freedom of the copyright officer in interpreting copyright, providing copyright information, teaching and writing about copyright, and engaging in advocacy efforts. The results indicate that the typical Canadian university copyright officer holds an MLS degree or equivalent but has no formal copyright or legal education; works exclusively as a copyright officer within the library system; and is very new to copyright work. Just under half of the copyright officers surveyed have academic freedom, and of those, almost none have considered the implications of this for their copyright work. The author argues that the position of university copyright officer should have faculty status so that the copyright officer can exercise academic freedom as they negotiate the changing and contentious copyright landscape.

Keywords

copyright; academic libraries; survey

Introduction

In a recent issue of *Intellectual Property Journal*, copyright lawyer and educator Lesley Ellen Harris posed the question "Lawyer or librarian? Who will answer your copyright question?" (Harris, 2015). She claims that in many institutions and organizations, there has been a shift from lawyers to librarians as the "go-to" person for copyright queries.

While there has indeed been a shift, I would argue that it has not been from lawyer to librarian. At least in universities (the focus of this article), faculty and staff could never simply pop into the office of legal counsel to get a quick answer to a copyright question; librarians have always been the *de facto* copyright advisors. The shift that has happened is in the complexity and visibility of the librarian's role with respect to copyright. Advances in technologies for reproduction and dissemination of works in the last few decades have required librarians to expand their copyright knowledge; the internet in particular has vastly complicated the management of copyright compliance. But the biggest catalyst for the shift in Canadian university librarians' roles was Access Copyright's June 12, 2010 filing of its proposed 2011-2013 tariff for post-secondary educational institutions. That move on Access Copyright's part shook academic librarians out of the complacency brought about by 16 years of a black-and-white blanket licensing regime and forced us to consider the implications of a post-licence landscape. With all the uncertainty surrounding the licence/tariff situation, librarians were sought out more than ever for advice on copyright matters and became more proactive in offering educational opportunities to various campus groups. The changes wrought to Canadian law by the Copyright Modernization Act and the impact of the Supreme Court of Canada's pentology of copyright decisions in 2012 only increased the demands on librarians' expertise.

Not only has there been a shift in the complexity and visibility of librarians' existing roles as copyright advisors, but there has also been a related shift in universities' structural approach to copyright management—and for the same reasons. It is shifting from being an additional role alongside other, often more prominent, roles such as collections, liaison, or reference, to being its own full-time job. In a 2008 study of copyright communication in Canadian academic libraries, Tony Horava (2010) identified four Copyright Officers. Seven years later, that number had grown to 27 (Graham & Winter, 2016). Universities have established, or are establishing, copyright offices, some with several positions. For example, the University of Toronto has a Scholarly Communications and Copyright Office with a Head, three Copyright Outreach Librarians, and a Licensing Specialist. The situation in the United States is similar: Kenneth Crews (2014) notes the “gradual but steady emergence of professional copyright positions, and sometimes formal offices, and with the primary responsibility to address copyright issues in connection with teaching, research, and library services...A new profession of the university ‘copyright officer’ has taken root.”

In 2015, I undertook a research project to get a snapshot of this emerging profession. Not only did I want to answer Lesley Ellen Harris's as-yet-unasked question (lawyer or librarian?), but I also wanted to find out more about the people occupying copyright positions at Canadian universities. What do they call themselves? What is their academic background? What kind of copyright education and training do they have? Where do they fit into the structure of the organization? I also wanted to probe the intersection of copyright and academic freedom. Most discussions of copyright and academic freedom focus on one of two issues: the “academic exception” that gives faculty members ownership over works made in the course of employment (e.g. Triggs, 2009), or how copyright affects faculty members' academic freedom in using and

disseminating copyright-protected works (e.g. Moscon, 2015). My focus was not the academic freedom of the professor who is creating and using copyright-protected works, but rather the academic freedom of the copyright librarian, which seems to have been overlooked.

Methodology

The subjects of this research were the people on the “front lines” of day-to-day copyright management: not the clerks at the bookstore clearing coursepacks, and not the senior administrators signing off on licences. Although many people in both those positions are very knowledgeable about copyright, my focus was on the people in the middle: the professionals answering faculty questions, offering workshops, writing and maintaining copyright information web pages, perhaps developing guidelines or policies. To define and limit the sample, only Canadian universities that are members of Universities Canada *and* that have faculty associations that are direct members of the Canadian Association of University Teachers (CAUT) were included. Very small institutions that are affiliated with larger ones were excluded. In the fall of 2014, I searched the websites of the sampled institutions to identify the copyright contact person or people for each institution. I contacted 67 people at 47 institutions by e-mail with one follow-up reminder if necessary. I conducted interviews by telephone in the winter and spring of 2015 with 46 people at 32 institutions for a response rate of 68%.

Results and Discussion

Position Title

An indicator of this position’s emergent status is the number of different names for it. Many copyright specialists don’t have an official title at all that indicates this area of responsibility; for example, my official title is “Academic Librarian” and I am only unofficially the “Copyright Coordinator” for my institution. Among the respondents who do have titles that explicitly reference copyright or intellectual property, there were 13 variations. “Copyright Officer” is the most common (32.6%), but many respondents expressed dissatisfaction with this title (whether they held it or not) because of the policing and punitive connotations of the word “officer”. Note that this word does not seem to carry these same connotations in titles such as “Records Officer”, “Returning Officer”, or “Chief Financial Officer”; it must be the juxtaposition with the word “copyright” that conjures that sense. This is consistent with how intimidating many people in academia find copyright and how trepidatiously they approach it. Even before the suits against York University and Université Laval, faculty were worried about doing the “wrong” thing and getting the university (or themselves) “in trouble”. Respondents who mentioned the “officer” issue stressed that they saw their role as advising and not enforcing; as one person put it, “ensuring access to material in a compliant way”.

The second most common title (13%) is “Copyright Librarian”, or some variation thereof (e.g. “Copyright Services Librarian” or “Scholarly Communications and Copyright Librarian”). Because of the small number of people with certain titles—some are in fact

unique—it is not possible to delve too deeply into this data without risking a breach of confidentiality. I can note that several respondents have, like me, informal or *ad hoc* titles, and that several people have official titles that don't match the titles on their websites or e-mail signatures. Despite the increased importance and workload of copyright management in the university, there is still a surprising degree of informality at more than a few institutions.

Workload

For 65% of respondents copyright is a full-time job. The 35% for whom copyright is only part of their job were asked to estimate what percentage of their time they spent on copyright work. This was a difficult question to answer since copyright workload can vary greatly from day to day, week to week, month to month, and year to year. Respondents were asked to think about a typical year's work and come up with an average percentage. Most (42%) estimated that copyright was about 5-10% of their total workload. About 17% estimated it at 20-25%; 8% estimated it at 50%; another 17% estimated it at 79-80%, and the final nearly 17% simply couldn't come up with a number.

Years of Experience

Participants were asked how long they have been involved in some kind of copyright work, and not just in their current positions. Data from this question certainly bear out Crews' observation that this is a new profession. While there were a handful of participants with more than 20 years of copyright experience, nearly three quarters had less than 10 years, nearly half had less than 5 years, and 15% had a year or less. The mode for this question—by a long shot—was a mere 6 months.

Education

The purpose of this question was to answer Lesley Ellen Harris's question: lawyer or librarian? Sometimes, though rarely, the answer is "both". But the overwhelming majority of participants have a library/information science degree or diploma and no formal legal training. Slightly more than two thirds have an MLS degree or equivalent; 11% have a library technician's diploma; 13% have a law degree; and 11% have neither library nor legal education. Note that the percentages do not add up to 100 because people may have a library degree *and* a law degree, or a library diploma *and* degree.

Copyright Education & Training

Given that there are library schools and law schools but there are no copyright schools, where do university copyright specialists learn about copyright management? Not surprisingly, most of them (37%) have had no formal education or training in copyright at all. They have taught themselves everything they know through extensive reading, exchanges with other copyright professionals, and on-the-job experience. 30% have taken non-credit courses (such as the ones offered by copyrightlaws.com) or attended

conference presentations or workshops on copyright. 17% have taken or audited credit courses in copyright, and 13% have relevant degrees.

Despite the increasing complexity and importance of copyright management, there are still few educational opportunities for people in, or interested in, the field. A look at Canadian library school course offerings as of May 2016 shows only one course explicitly and specifically devoted to copyright: LIS 598, Copyright for Information Professionals at the University of Alberta. Five other courses at other institutions at least partially focus on copyright: LIBR 561, Information Policy at the University of British Columbia; INF 2181, Information Policy, Regulation, and Law at the University of Toronto; LIS 9158, Legal Issues for Information Professionals at Western University; ISI 6311, Information & the Law at the University of Ottawa; and GLIS 690, Information Policy at McGill University. It is possible that copyright is touched upon in other courses, but it is not evident from the course names or descriptions on the schools' websites. Of the 31 participants with a library degree, only one had had some exposure to copyright issues as part of the curriculum. There were too few participants with law degrees to discuss how much copyright education they had during their legal studies without risking a breach of confidentiality, but there is no doubt that it is just as possible to graduate from law school without much or any copyright education as it is from library school. Most law schools offer an intellectual property survey course, and many offer an elective in copyright (Sookman, 2013), but these electives can go for years without being offered.

Institutional Context

This study's focus was on individuals and not institutions, but it is important to situate those individuals within their institutional contexts. At more than three quarters of the surveyed institutions, copyright management falls within the purview of the Library. There is a historical reason for this, of course: libraries housed the printed materials that people wished to copy and then the physical means of reproduction. Copying, and by extension copyright, was quite literally our turf. Now, thanks to nearly ubiquitous access to digital scholarship and printing, the library is no longer the locus of most copying on campus, but I would argue that it is still the ideal home for copyright management. The library may no longer be the keeper of the photocopiers, but it is the keeper of the values of librarianship. Copyright is a matter of law, but it also intersects with fundamental concerns of librarianship such as intellectual freedom, information literacy, access to information, and social justice. Where responsibility for copyright management lies outside the library, I fear that awareness of these concerns and the nuance they lend to thinking about copyright could be lost.

The "librarian's lens" is evident in the comments some participants made about their institutions' copyright policies or guidelines (or lack thereof). Ninety percent of institutions have, or are in the process of drafting, some kind of official document on copyright. Several participants indicated a preference for guidelines over policies, for both practical and professional reasons. Practically, guidelines are appealing because they involve less bureaucracy than formal policies and are therefore easier and faster to

create and update. It is important to be responsive to changes in the legal landscape and risk environment. Professionally, guidelines are appealing because they have an educational function: they guide people in making informed decisions rather than prescribing inflexible rules.

Nearly 60% of institutions have a copyright committee, with variations in formality, composition, mandate, and reporting structure, a discussion of which is beyond the scope of this article. Of the committees in existence, a little less than half consult with faculty, staff, and/or students regarding copyright issues. Of the ones that do consult, that “consultation” is usually assumed from representation: very few actively seek out feedback from faculty, staff, or students beyond the ones that may be on the committee. Nearly two thirds of committees consult with a lawyer; again, that consultation may be assumed from representation, more plausibly than for other groups. If there is a lawyer on the committee, it is fair to say that the committee has consulted with a lawyer; but if the Dean of Arts is on the committee, is it safe to assume that the Faculty of Arts has been consulted? I was also curious to know if the lawyer that copyright committees are consulting has particular expertise in copyright: for 65% of committees, the answer was “yes”.

I also asked participants the following question: “Who, be it individual or body, has the final say on major copyright decisions such as adopting a policy or signing a licence with a copyright collective at your institution?” Simply put: where does the buck stop? Surprisingly, nearly half had no idea. One person who *did* know remarked that it had taken a very long time to figure it out. Others noted that the whole copyright situation at their institutions was “weird and diffuse” and “murky”. And while university administrations can be opaque, knowing who the real decision-maker is in one’s area of endeavour seems like a good idea. As I will argue next, university copyright specialists should not merely be following received policy; they should be actively attempting to influence policy, and an understanding of the power structures, people, and dynamics at play is essential to this endeavour.

Academic Freedom

Forty-six percent of the survey participants indicated that they are part of the faculty bargaining unit at their institutions and they are governed by a collective agreement that includes language on academic freedom. The definition of academic freedom is a lot like the definition of fair dealing: there isn’t one. There are statements about what it includes (AAUP, 1970; CAUT, 2011), but not about what it *is*. If one looks at the CAUT Policy Statement on Academic Freedom, upon which many collective agreements’ academic freedom language is based, it includes activities that are closely related to the work of the university copyright specialist (emphasis added):

Academic freedom includes the right, without restriction by prescribed doctrine, to freedom to **teach and discuss**; freedom to carry out research and disseminate and publish the results thereof; freedom to produce and perform creative works; freedom to engage in service to the institution and the

community; freedom to **express one's opinion about the institution, its administration, and the system in which one works**; freedom to acquire, preserve, and **provide access** to documentary material in all formats; and freedom to participate in professional and representative academic bodies. Academic freedom always entails freedom from institutional censorship. (CAUT, 2011)

When I give a workshop on copyright, I am teaching and discussing. When my institution is considering signing a licence or introducing a policy, I am going to express my opinion about it. Academic freedom is not the same as intellectual freedom, although there are similarities. One of the key differences is that academic freedom is not a basic human right: it's restricted to academics acting in their academic capacities. Staff members do not have academic freedom. Professors and most librarians have academic freedom and can do research on, for example, hate speech and discrimination, but they cannot use academic freedom to justify uttering a homophobic slur on the street. Academic freedom, like the fair dealing purpose of research, should be given a large and liberal interpretation, but it is not without limits. It is not freedom to behave badly or to always get one's own way, and it is not the freedom to ignore the law, copyright or otherwise.

During the survey, I asked the participants who had academic freedom if they believed they had the right to exercise that freedom when it came to the part of their job that deals with copyright. While most said it had never ever occurred to them and that it was an "interesting question", some did have opinions, and they were in two camps. One group was adamant that they had academic freedom in their copyright work; the other group felt that their copyright work was a quasi-administrative function for which they had to "take their faculty hats off and look at things from an institutional perspective". Is the kind of professional copyright work that copyright specialists do—designing and leading information sessions, writing guidelines and FAQs, answering faculty and student questions—academic work where we use our knowledge, expertise, critical thinking, and judgement, or is it administrative work where we simply toe the company line and follow received policy? Or is it a bit of both?

The 16th and latest edition of the Chicago Manual of Style (and several of its earlier editions) observes that "the right of fair use is valuable to scholarship, and it should not be allowed to decay because scholars fail to employ it boldly" (2010, p. 190-191). One could say the same thing about academic freedom. Like copyright, academic freedom can be shaped over time by the norms and practices of the academy. Recall that in the CCH v LSUC case, the Supreme Court observed at paragraph 55 that "it may be relevant to consider the custom or practice in a particular trade or industry to determine whether or not the character of the dealing is fair" (CCH Canadian Ltd v Law Society of Upper Canada, 2004). I worry that the custom or practice in academia could become self-censorship and excessive caution. We have become fearful. Several participants expressed concern about the potential risks of participating in this survey; one wanted to see the questions before agreeing to participate (they eventually did); and several

more commented on their colleagues' or their own fear to speak or write openly about copyright.

One can have academic freedom and still be cautious or fearful: this is especially true for academics in contract positions who have academic freedom in name only because they do not also have tenure or its equivalent. And academic freedom is not a requirement for speaking out: some of the most confident, knowledgeable, articulate, and seemingly fearless voices in the academic copyright conversation belong to people who, guessing from their titles, don't have faculty status and therefore don't have academic freedom. Academic freedom is neither a necessary nor a sufficient condition for doing copyright work, but it is a powerful protection for those who wish to question or critique administrative decisions. Those of us who have the protections of academic freedom should remember that we have it and use it to speak out freely in defence of exceptions for educational institutions and libraries/archives/museums, in defence of the public domain, in defence of fair dealing, in defence of users' rights, and in defence of balance in the Act.

Conclusion

The growth in dedicated copyright positions since Horava's study has been so steady that this emerging profession is well on its way to becoming firmly established. Yet it is new enough that it has not yet been concretely defined: it is still in flux, and still being shaped by those engaged in it. This research demonstrates that the role of copyright officer is dominated by librarians, with a few lawyers in the mix. Librarians and lawyers have vastly different training, responsibilities, and perspectives. An academic librarian's priority is to support the teaching and research mission of the university; a lawyer's chief responsibility is to minimize risk for the client. Whether educated as a librarian or a lawyer (or neither, or both), the copyright officer must have a thorough knowledge of and a deep commitment to the academic enterprise, as well as a nuanced understanding of its place within the broader cultural and informational ecosystem. I would advocate that copyright officers, regardless of their training, should have faculty status so they are protected by academic freedom as they negotiate the changing and contentious copyright landscape. The eventual answer to Harris's query—who will answer your copyright question?—is ours to define by practice.

References

American Association of University Professors (AAUP). (1970). [1940 statement of principles on academic freedom and tenure](#).

Canadian Association of University Teachers (CAUT). (2011). [CAUT policy statement on academic freedom](#).

[CCH Canadian Ltd v Law Society of Upper Canada](#), 2004 SCC 13, McLachlin CJC.

- Chicago manual of style* (16th ed.). (2010). Chicago: University of Chicago Press.
- Crews, K. (2014). [The growth of copyright—copyright and universities: legal compliance or advancement of scholarship?](#) *IPRinfo* 2.
- Graham, R., & Winter, C. (2016). [Copyright practices and approaches at Canadian universities: report of a national survey](#). *ABC Copyright Conference*. Halifax.
- Harris, L. E. (2015). Lawyer or librarian? Who will answer your copyright question? *Intellectual Property Journal* 28(1), 33-8.
- Horava, T. (2016). Copyright communication in Canadian academic libraries: a national survey. *Canadian Journal of Information and Library Science* 34(1), 1-38.
- Moscon, V. (2015). Academic freedom, copyright, and access to scholarly works: a comparative perspective. In R. Caso and F. Giovanella (Eds.), *Balancing Copyright Law in the Digital Age*. Springer, 99-135.
- Sookman, B. (2013). [Intellectual property education: are Canadian law schools doing enough to support innovation?](#)
- Triggs, C. (2009). [Academic freedom, copyright, and the academic exception](#). *Workplace: A Journal for Academic Labor* 13.