

Advice to Member Associations - re Copyright Questions Being Asked of Your Members

Background

The Canadian Association of University Teachers, the Association of Universities and Colleges of Canada (AUCC) and Access Copyright (an organization representing publishers and authors) are involved in a hearing before the Copyright Board of Canada.

The hearing will determine the fee that Access Copyright can charge post secondary institutions to copy literary material.

The hearing process is currently at the "Interrogatories" stage. Interrogatories are formal written questions that parties to the hearing ask one another. Their purpose is to clarify matters of fact and help determine in advance what facts will be presented at the hearing itself.

Access Copyright has posed a series of interrogatories to AUCC. AUCC has forwarded these questions to university administrations across Canada who in turn have directed them at individual academic staff members. The interrogatory process is by its very nature invasive and burdensome and a number of academic staff associations and individual academic staff members have raised questions and concerns about the process.

The purpose of this memo is to assist academic staff associations and individual academic staff members in responding to the interrogatories.

General Principles

1. The Copyright Board is a quasi-judicial body. Academic staff must respect the interrogatory process while at the same time protect their own rights and interests.
2. In the absence of an order from the Copyright Board, university administrations cannot compel answers to questions involving the release of information within the custody and control of academic staff. Voluntarily acquiescing to administration demands for information, some of which properly may be not in the university's custody or control, sets a negative precedent and can undermine academic staff claims to custody and control in the materials they create. If in doubt about any request, do not comply unless the administration provides a copy of an order from the Copyright Board.
3. In addition, do not answer questions in the absence of a written warranty from the university administration that the information you provide will not be used in any disciplinary, evaluative or other process distinct from the proceedings before the copyright board.
4. Finally, if, in answer to any question, you do not have precise and accurate information, do not answer. An estimate or a guess is not appropriate.

If you have any questions about this advice, please contact CAUT Professional Officer Paul Jones (jones@caut.ca)