

Decline of Collective Copyright Licensing in Post-Secondaries Explained via the Theory of Fields

Donald Taylor
Simon Fraser University
dstaylor@sfu.ca

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Theory of Fields

- Developed by Neil Fligstein and Doug McAdam.
- The theory of fields is a general theory of social change and stability that rests on the view of strategic action fields as the building block of modern organizational life in the economy, civil society and state.

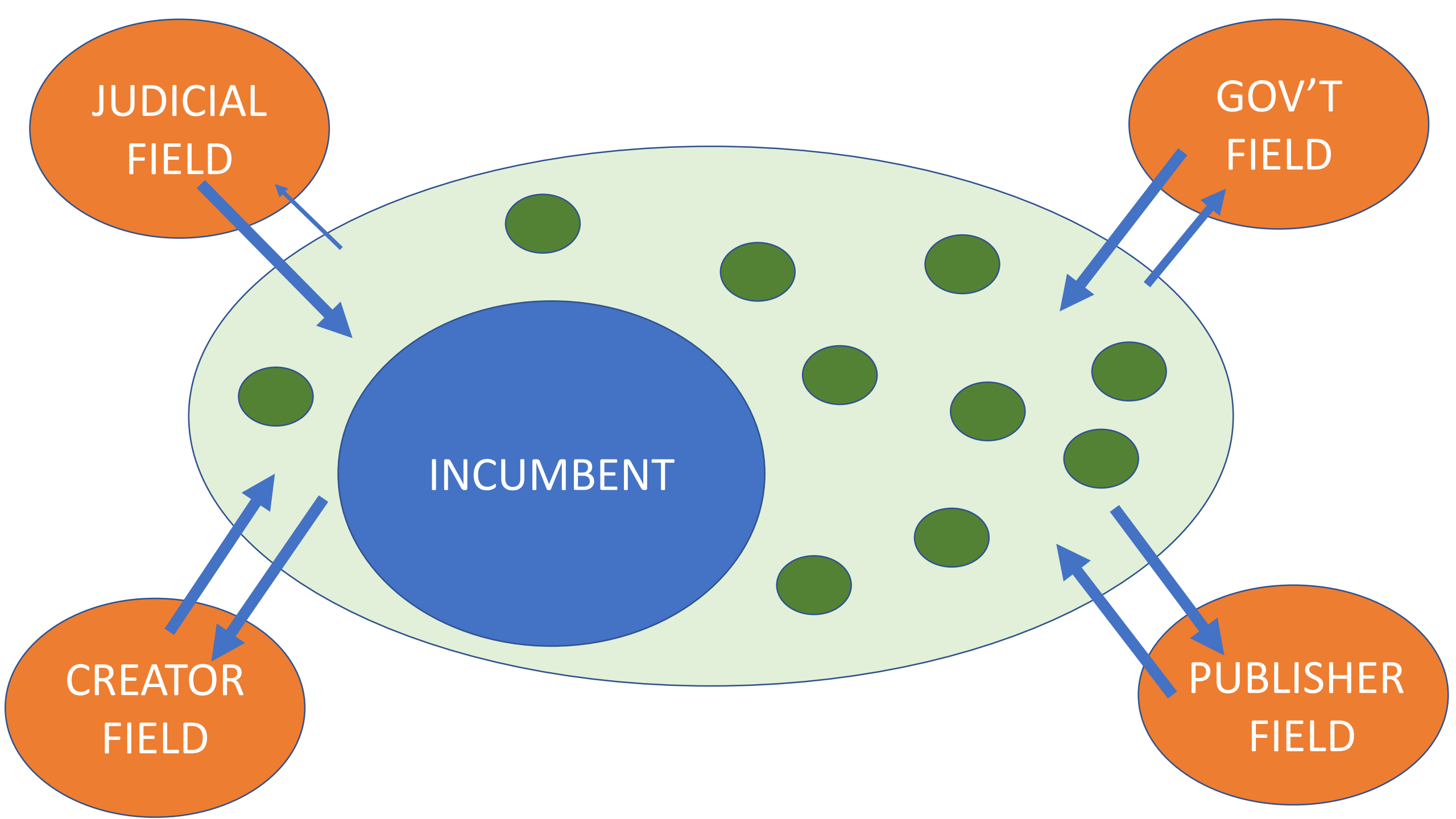
Elements of the presentation

- Brief description of elements of Theory of Fields
- Research methodology
- History of the strategic action field with reference to Theory
- Analysis of the crisis in the field via Theory of Fields



Elements of a strategic action field

- **Incumbent:** the actor whose interests and views are heavily reflected in the dominant organization of the field. The field is adapted to their interests. [Access Copyright]
- **Challenger:** less privileged and wield little influence over the field's operation. [Post-secondaries, AUCC/UC, ACCC/ICCan]
- **Internal Governance Unit:** not one for this field.
- **Proximate Fields:** has recurring ties to the field, and their actions routinely affect the strategic action field [Judicial, Gov't, Creators, Publishers]



JUDICIAL
FIELD

GOV'T
FIELD

INCUMBENT

CREATOR
FIELD

PUBLISHER
FIELD



Concepts for a strategic action field

- **Social Skill and Strategic Action:** “the attempt by social actors to create and sustain social worlds by securing the cooperation of others” and “the creation of identities, political coalitions, and interests.”
- **Meaning Making:** humans need to engage in collective meaning making and they do this by conforming to group norms which affirm meaning and membership.
- **Exogenic Shock:** an event that happens in an external field that carries significant impact on the field.

Research methodology

- Structured Interviews
- Corporate records and communications, Copyright Board rulings, and Federal Court testimonies.
- No participants from Access Copyright Board.



History of the Strategic Action Field

- 1988 Copyright Act allows for new CMOs to form.
- August 23, 1988 - Canadian Copyright Licencing Agency formed.
- 1988 Copyright Act revisions allowed the field to come into existence.
- 1994 – first CanCopy licence with post-secondaries.
- Some education and library groups opposed the CanCopy licence.
- CanCopy used skilled social action to overturn past practices.



Why did the field emerge so quickly?

- CanCopy's excellent social skill, or skilled social action.
 - Mobilized authors, politicians, publishers and educators to CanCopy's view of the copyright world.
 - Established strong relationships with allies in proximate fields.
- High cost of damages for non-commercial copyright infringement.
 - Indemnity clause in CanCopy licence.
 - "... it was an insurance policy."
- Risk averse nature of post-secondaries.
- Licence came at a reasonable price.



CanCopy / Access Copyright incumbency

- Strong allies in the proximate fields [Heritage, creators, publishers]
- Provided a service at a reasonable price.
- Jurisprudence backed up incumbent's copyright mindset.
- Did little to upset the field.
- Challengers accepted incumbent's logic and prevailing order.
- Incumbent so strong the field ignored CCH ruling.

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Beginning of the episode of contention

- Failure of AUCC to negotiate with Access Copyright in 2009 & 2010.
 - “Go file a tariff and then we might talk to you...”
- March 2010 – Access Copyright files tariff.
 - \$45 FTE for universities and \$35 FTE for colleges/institutes.
 - Overall increase of at least 3X of the **total** cost of previous Access Copyright licence



Episode of contention: the tariff

- Access failed to use their social skill
 - Did not plan for lengthy negotiation period.
 - Did not communicate desire to change to a tariff model.
 - Incumbency made them take the status quo for granted.
 - Perceived to be “flexing their muscles” and “overplaying their hand”.



Episode of contention: the tariff cont...

- Audit provisions

“give Access Copyright, on reasonable notice, right of access throughout the Educational Institution’s premises, including full access to the Secure Network and all Course Collections, at any reasonable times, to administer the survey”

- Made institutions assume that Access “didn’t understand what a faculty association, or faculty union, was when they suggested things like that.”



Episode of contention: the tariff challenge

- Tariff gave challengers something to challenge.
 - Institutions pursue their own copyright strategies.
 - Institutions challenge tariff at the Copyright Board.
 - AUCC/ACCC challenge tariff at the Copyright Board.
- Between March and April 2010 Access brought the field into a crisis and destroyed their good will.
- Access was more interested in “confrontation that brokering a deal.”



Further contention: interim tariff

- License extended to December 31, 2010.
- Interim tariff granted December 2010.
- Access admits publicly that tariff process could take years.
 - Not a confidence building comment
- Interviewees “institutions would have signed, grumbled but signed” a licence at \$12 or \$14 per FTE.



Further contention: interim tariff

- Lack of “meaning making” amongst challengers.

Meaning?

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- Toronto and Western strike deals with Access - \$27.50 FTE
 - Lack of licence a “high pressure issue” on campuses
- Challengers can act in their own self interest.
- Toronto and Western “undercut” AUCC



Further contention: 2012 Model Licence

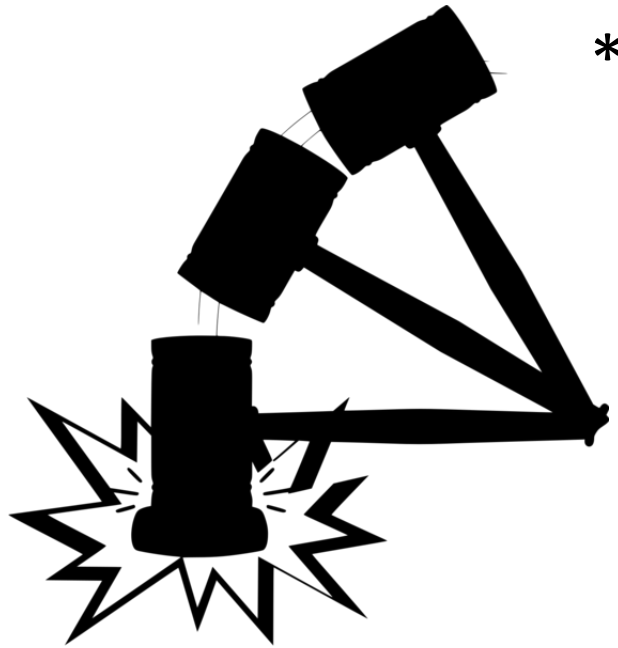
- AUCC / ACCC “eager” to make a deal with Access.
- April 2012 – AUCC and ACCC announce model licence deal.
 - \$26 per FTE for universities
 - \$10 per FTE for colleges and institutes
 - “price higher than AUCC would have liked”
- Model licence rationale poorly explained by AUCC/ACCC



Further contention: 2012 Model Licence cont

- AUCC / ACCC lack social skill in explaining their actions
- 2016 testimony as to why they made a deal:
 - Access ready to make a deal
 - Cost certainty
 - Withdrawing tariff objections was “good faith” measure
 - Could work on an agreeable survey methodology
- AUCC and ACCC actions perceived as “sort of a bit all over the place” but field is approaching a settlement.

Exogenic Shock



- June 2012 – Copyright Modernization Act
- July 2012 – Alberta (Education) v Access Copyright



Exogenic Shock: Copyright Modernization Act

C-11

First Session, Forty-first Parliament,
60-61 Elizabeth II, 2011-2012

- Copyright Modernization Act not about fair dealing to AUCC and ACCC.

HOUSE OF COMMONS OF CANADA

BILL C-11

An Act to amend the Copyright Act

AS PASSED

BY THE HOUSE OF COMMONS
JUNE 18, 2012

- All about online learning.

Exogenic Shock: Alberta v Access Copyright

- “Alberta went further than we expected it to go.”
- “2012 decisions were the icing”
- Alberta provided a meaning making cause to rally around.



SUPREME COURT OF CANADA

CITATION: Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright), 2012 SCC 37, [2012] 2 S.C.R. 345

DATE: 20120712
DOCKET: 33888

BETWEEN:

Province of Alberta as represented by the Minister of Education, et al.
Appellants
and
Canadian Copyright Licensing Agency Operating as “Access Copyright”
Respondent



Further disruption to the field: 2012-2016

- AUCC/UC and ACCC/CICan not in a position to significantly influence the field.
- Challenge being led by those who had opted out of Access Copyright licence.
- Serious disruption at end of 2015.
- Those who stayed with Access did so for “insurance purposes”

Successful social action by Access Copyright

- From 2013 onwards Access mobilized their allies
- Successfully shifted responsibility for field disruption to others.
- Effective social action with Heritage Canada and *Shifting Paradigms* report.




CSAN Parliament Reception [CC BY-NC-SA 2.0](#)



Access Copyright v York

- Fall 2013 Access negotiating with AUCC on audit provisions
- “Access suing York did not make for a good negotiating climate”
- Suing customers while inviting them to the table demonstrates poor social skill.
- Skilled social actor mobilizes other actors to organize the field.

Federal Court  Cour fédérale

Date: 20170712
Docket: T-578-13
Citation: 2017 FC 669

BETWEEN:

THE CANADIAN COPYRIGHT LICENSING
AGENCY ("ACCESS COPYRIGHT")

Plaintiff/
Defendant by Counterclaim

and

YORK UNIVERSITY

Fair Dealing narrative – social skill failure

- Universities Canada/AUCC and CICan/ACCC did not differentiate from K-12 sector.
- K-12 sector is different from post-secondaries.
- Social skill failure led to false narrative gaining traction.
- Universities Canada and CICan lack of engagement with proximate fields after 2014





No field settlement in sight

- 2016 – 88% of non-Quebec students at an institution without Access Copyright licence.
- 2017 York decision had minimal effect on post-secondaries.
- Field settlement waiting for final decision in York case.
This will be another exogenic shock, as it will be imposed by the courts from outside the strategic action field.

Exogenic shock to settle the field

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- Access Copyright victory: Strategic Action Field with Access as incumbent, but with a loss of respect.
- Significant level of antagonism on part of challengers.
- Will require significant social skill on part of Access to allow for the cooperation required for the field to reproduce itself favourably for Access and acceptable to challengers.

Exogenic shock to settle the field



- York victory: Strategic Action Field with opt-outs as the incumbents with Access as an actor.
- Would operate with a high level of consensus and coalition which is different from the old hierarchical field.



Conclusion

- Past 9 years of field disruption attributable to lack of skilled social action on part of incumbents and challengers.
- Actions are what actors in the field see and act on as actors cannot truly know the motivations or intentions of other actors.

Questions?

Donald Taylor
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