

Teaching an invisible subject

How are we educating faculty about copyright?

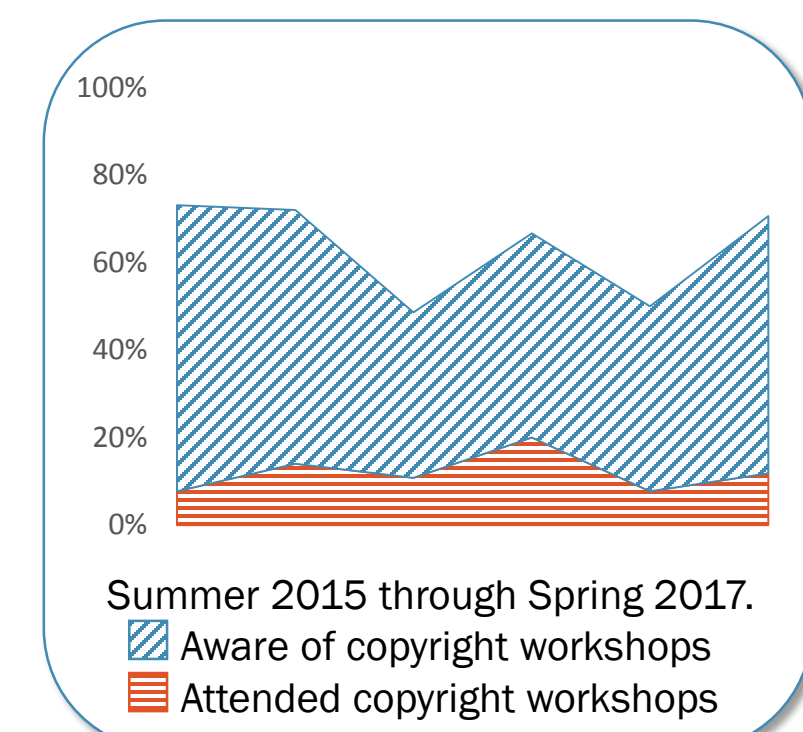
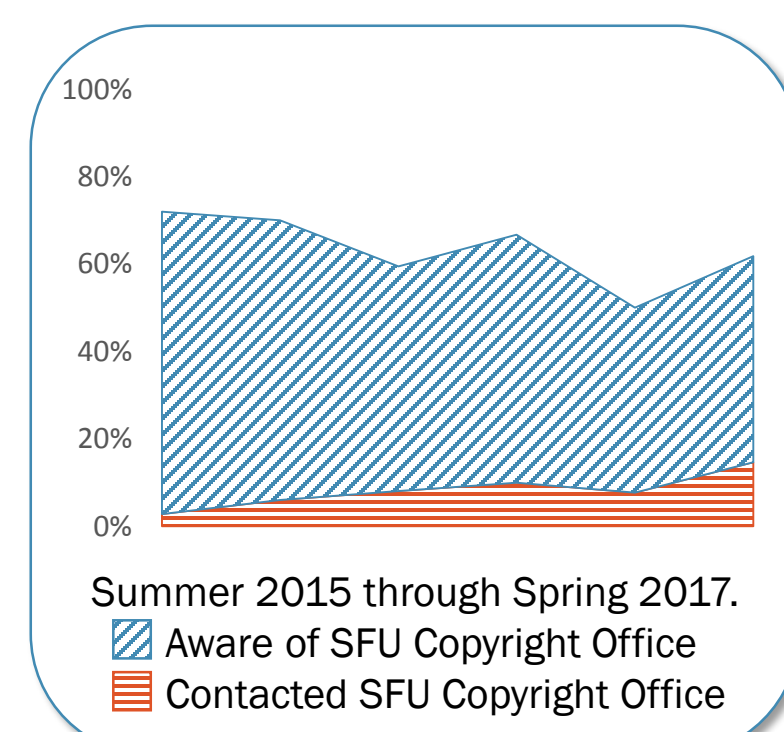
Jennifer Zerkee, MAS

Simon Fraser University | jstevens@sfu.ca

Background

The SFU Copyright Office has long felt we aren't reaching as many instructors with copyright information as we would like to, despite workshops each semester at each campus, regular surveys of instructors, and broadcast emails to faculty and non-faculty instructors.

Di Valentino (2015) found that 40% of Canadian teaching faculty don't know if their institution offers copyright training (p. 6). Reaching instructors is difficult. Instructors work autonomously and are siloed in different departments and campuses; have a variety of employment statuses (i.e., faculty and non-faculty, FT and PT); and may work from a distance. It can be unclear when copyright has been infringed, and breaking the rules won't impede teaching. Those rules (including law, case law, and guidelines and best practices) have changed frequently and drastically in Canada in recent years.



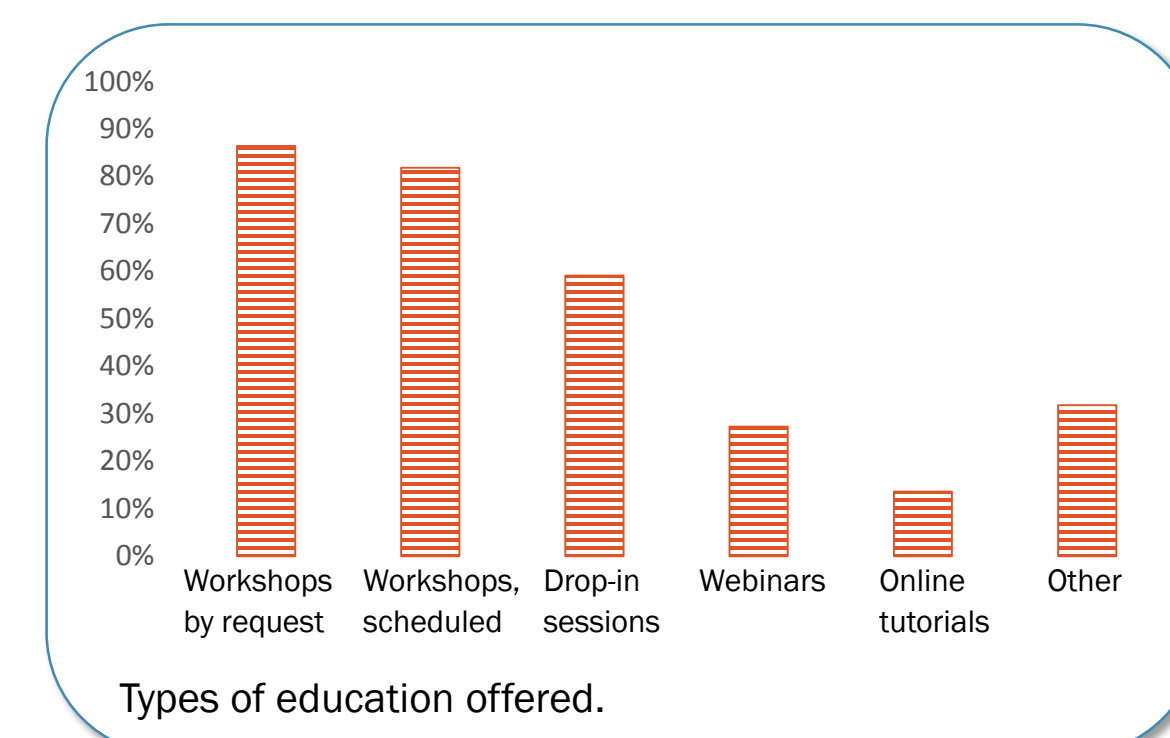
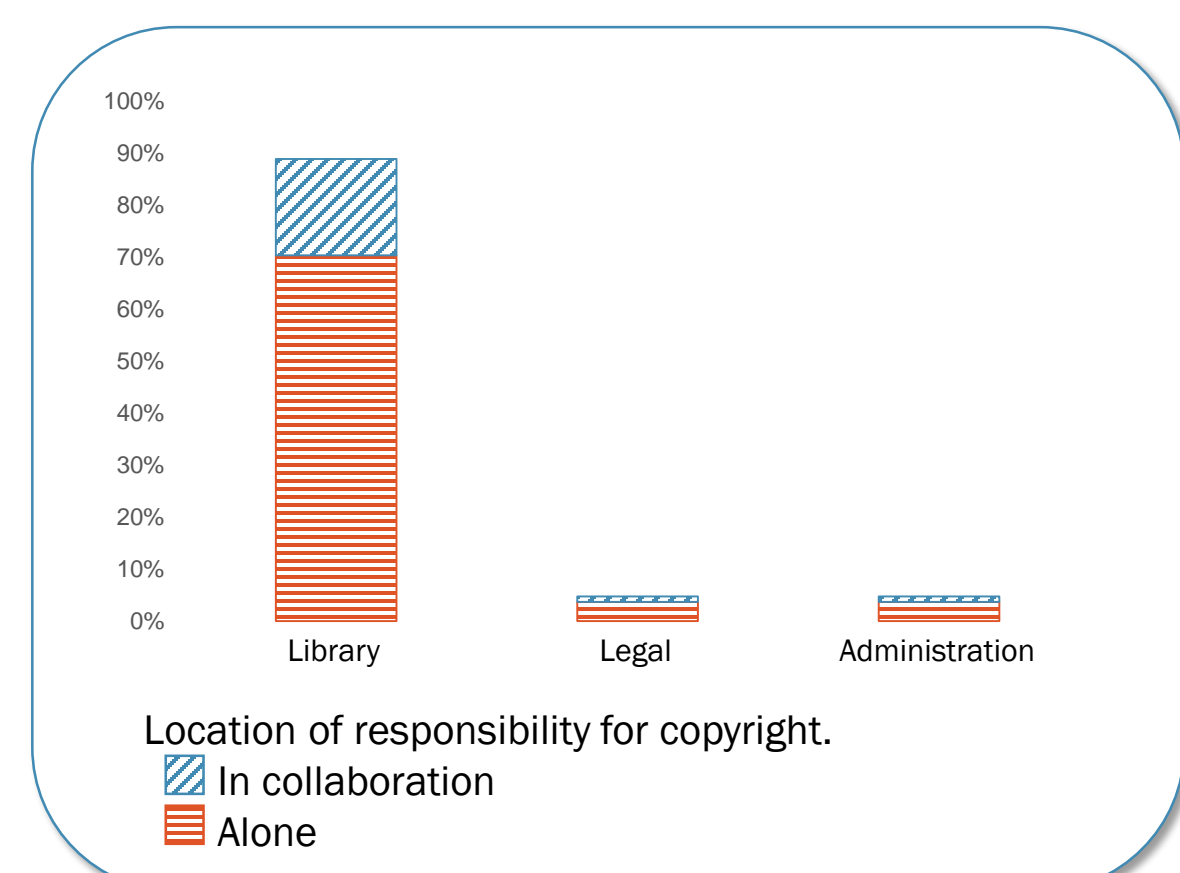
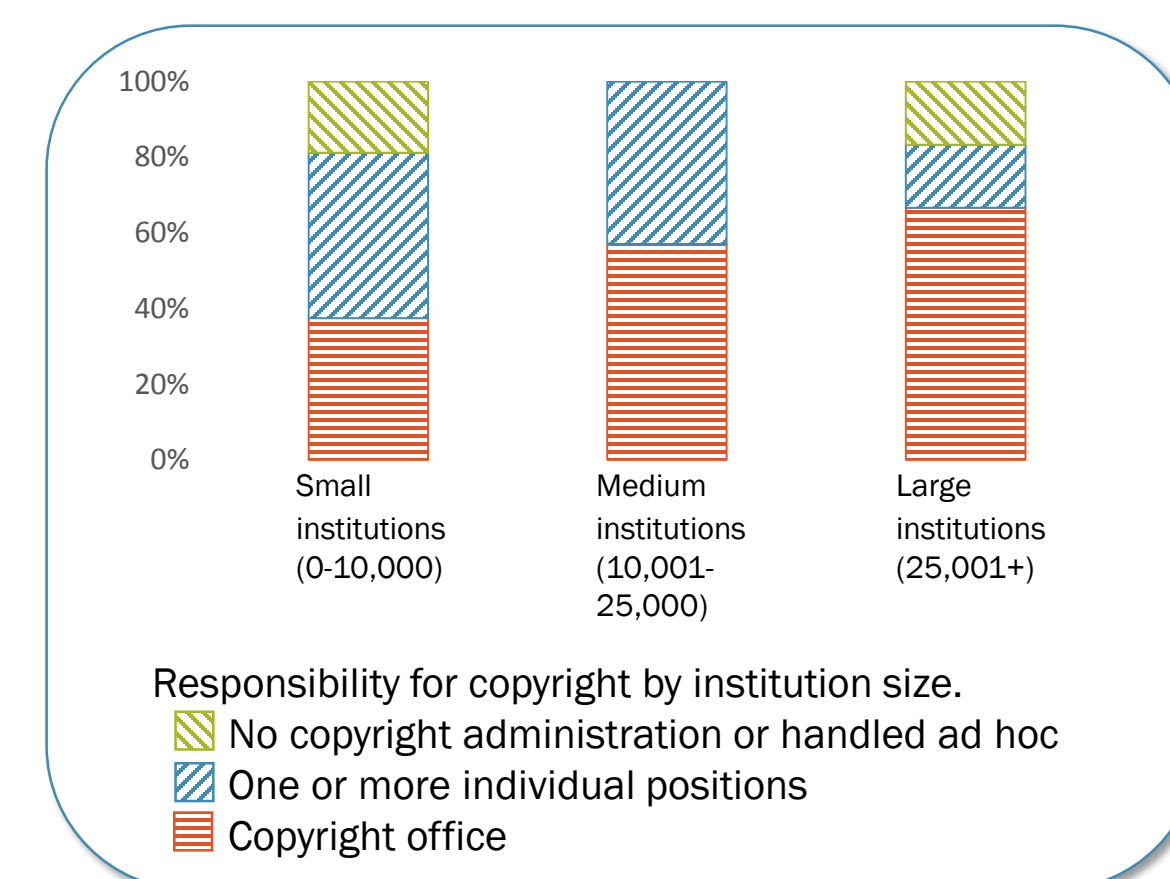
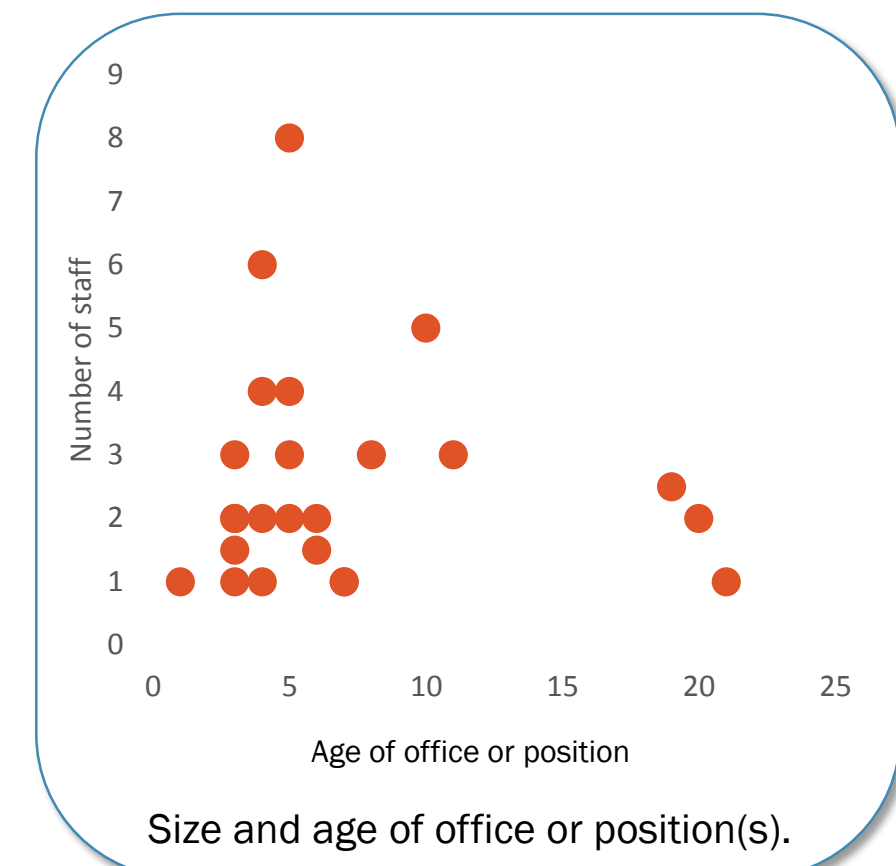
Research questions

How are copyright administrators reaching instructors with information about copyright and how it affects their teaching?

What are the most common methods of educating instructors, and how are these opportunities communicated?

How effective do copyright administrators feel their offerings are at enabling instructors to find, use, and create teaching materials responsibly?

Findings



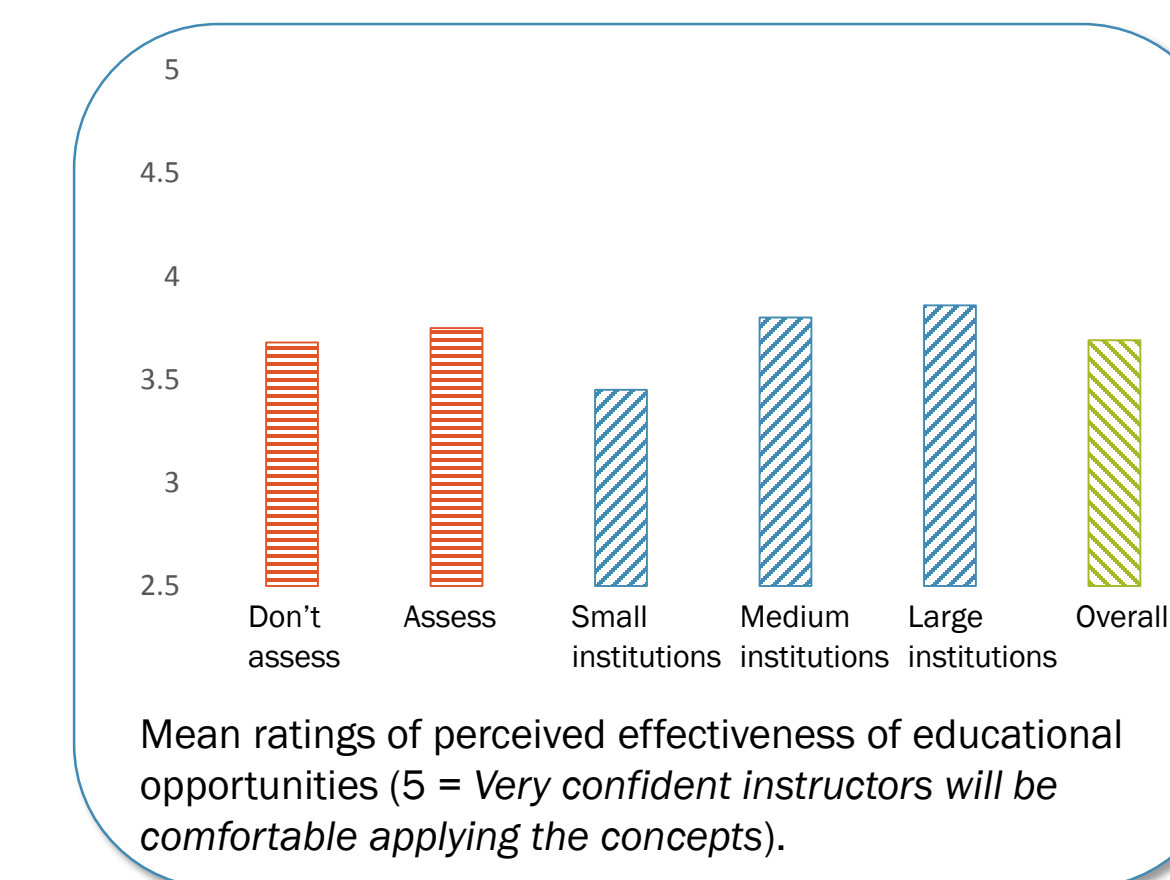
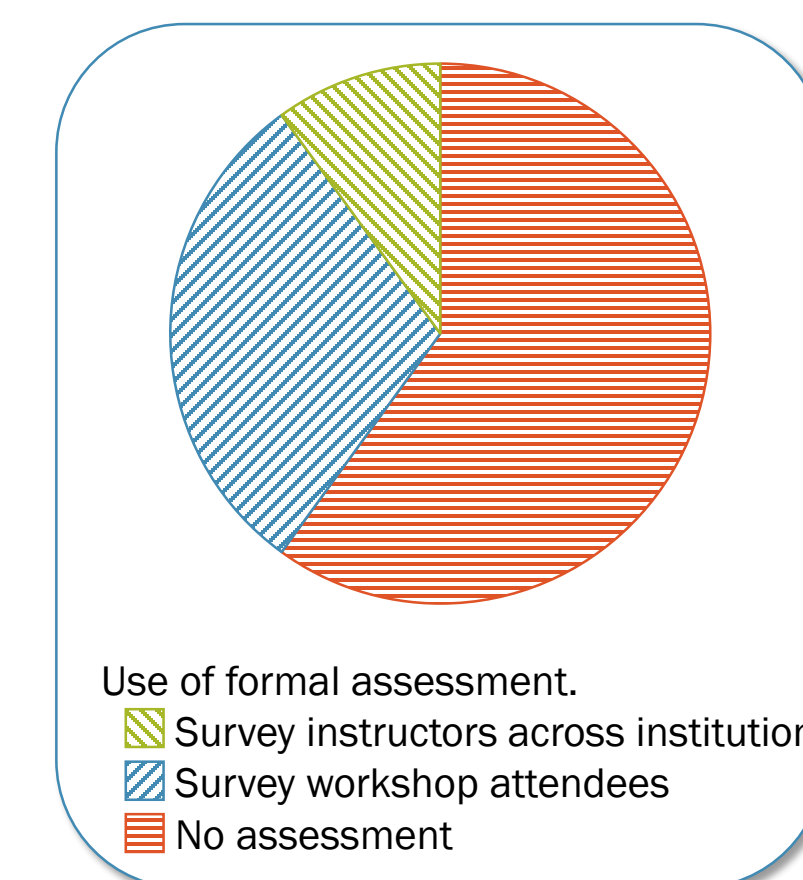
Discussion

Did not find the "ideal" way to reach and educate a broader group of instructors.

Did find that many copyright administrators are taking a more strategic approach to instructor education by

- going where instructors are by presenting at departmental meetings,
- educating administrative figures in departments (whom instructors often approach first with teaching issues and questions), and/or
- having authority figures (e.g., deans, provosts) advertise on their behalf to lend weight to copyright messaging.

Not many copyright administrators are actively assessing their copyright instruction, or the general level of copyright knowledge at their institutions – yet most respondents feel fairly confident that their educational opportunities are effective, based on experience, anecdotal evidence, and questions from faculty.



Conclusion

Post-secondary institutions in Canada have moved away from collective licensing schemes with organizations Access Copyright and Copibec. This is due in part to the "pentology" of copyright cases in 2012 (see sidebar), which reinforced users' rights under fair dealing (see Geist, 2013). Access Copyright is in the process of suing York University, and Copibec may continue its suit of Université Laval, in part over their reliance on fair dealing guidelines. In 2017 Parliament will be reviewing the *Copyright Act*, and we are already seeing heavy lobbying from these and other creator rights organizations.

In the face of these events, there is an increasing need for institutions to be able to demonstrate compliance with copyright law; this will require education of instructors and all members of a campus community, as well as documentation of assessment of the effectiveness of those measures.

Fair dealing

Canada's Copyright Act

"Fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright."

"Fair dealing for the purpose of criticism or review does not infringe copyright [if the source and (if available) the author, performer, maker, or broadcaster is mentioned]."

"Fair dealing for the purpose of news reporting does not infringe copyright [if the source and (if available) the author, performer, maker, or broadcaster is mentioned]." (*Copyright Act*, s 29 through 29.2)

Canadian case law: CCH Canadian Ltd. v. Law Society of Upper Canada, 2004 SCC 13

Publishers challenged the Law Society's practice of making photocopies of articles for students. The court found the copying to be fair dealing for the purpose of research: "Research" must be given a large and liberal interpretation in order to ensure that users' rights are not unduly constrained" (para 51). The court also established six criteria to consider when determining the fairness of a specific instance of use:

- the purpose of the dealing
- the character of the dealing
- the amount of the dealing
- alternatives to the dealing
- the nature of the work
- the effect of the dealing on the work

The copyright pentology

These cases collectively emphasized a "large and liberal" interpretation of fair dealing.

Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright), 2012 SCC 37

Can photocopies made by teachers and distributed to students as part of class instruction be considered fair dealing? In short, yes; this is fair dealing for the purpose of private study [education was added as a fair dealing purpose after this case was heard].

Society of Composers, Authors and Music Publishers of Canada v. Bell Canada, 2012 SCC 36

Does the provision of song previews (excerpts) for consumers require payment of royalties? No; previews are fair dealing for the purpose of research.

Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada, 2012 SCC 34

When video games are sold online, is the right to communicate by telecommunication for embedded music triggered, thereby requiring additional royalties? No.

Rogers Communications Inc. v. Society of Composers, Authors and Music Publishers of Canada, 2012 SCC 35

Is the streaming of a musical work a "communication to the public," when individuals might receive it on demand at the time of their choice? Yes.

Re:Sound v. Motion Picture Theatre Associations of Canada, 2012 SCC 38

Are contributors to a soundtrack eligible for additional royalties when the movie is performed in public? No.

Methodology

Copyright contacts or heads of libraries for the 63 English-speaking and bilingual Universities Canada member institutions with available contact information were invited to participate. The survey remained open for three weeks, with a reminder email sent after about ten days.

Thirty-two responses were received (50.8%). All questions were optional but most respondents answered most questions. Seventeen respondents consented to a follow-up survey. Thirteen of these addressed three to six questions elaborating on their initial responses.

- Only 14% of institutions *require* faculty to undertake copyright training. 81% of copyright offices and 42% of copyright positions are mandated to provide education, but 82% of respondents provide copyright education and all of these provide education for instructors specifically.
- 64% of respondents collaborate with other offices at the institution to provide education, including teaching and learning centres, Graduate Studies, and individual faculties/schools.
- The most common methods of advertising workshops include email (from the copyright office/position or a higher level such as vice president's or provost's office or legal office) and use of copyright website or library website.
- Challenges to providing copyright education include lack of time, no requirement for faculty to attend, and frequent changes to rules and guidelines.

Acknowledgements

Don Taylor
 SFU Library Research Interest Group
 Simon Fraser University Library
 Cory and Ava Zerkee

References

Di Valentino, L. (2015). Awareness and perception of copyright among teaching faculty at Canadian universities. *Partnership: The Canadian Journal of Library and Information Practice and Research*, 10(2), 1-16. <http://dx.doi.org/10.21083/partnership.v10i2.3556>
 Geist, M. (2013). *The Copyright Pentology: How the Supreme Court of Canada Shook the Foundations of Canadian Copyright Law*. Ottawa, ON: University of Ottawa Press. <https://press.uottawa.ca/copyright-pentology/html>

Further information

Zerkee, J. (2016). Approaches to copyright education for faculty in Canada. *Partnership: The Canadian Journal of Library and Information Practice and Research*, 11(2), 1-28. <http://dx.doi.org/10.21083/partnership.v11i2.3794>

