



### *Research Article*

#### **What Happened After the 2012 Shift in Canadian Copyright Law? An Updated Survey on How Copyright is Managed across Canadian Universities**

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**Received:** 3 Jan. 2017

**Accepted:** 9 June 2017

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### **Abstract**

**Objective** – The purpose of this study is to understand the practices and approaches followed by Canadian universities in copyright education, permissions clearance, and policy development in light of major changes to Canadian copyright law that occurred in mid-2012. The study also seeks to identify aspects of copyright management perceived by the universities to be challenging.

**Methods** – In 2015, an invitation to complete an online survey on institutional copyright practices was sent to the senior administrator at member libraries of Canada's four regional academic library consortia. The invitation requested completion of the survey by the person best suited to respond on behalf of the institution. Study methods were largely adapted from those used in a 2008 survey conducted by another researcher who targeted members of same library consortia.

**Results** – While the university library maintained its leadership role in copyright matters across the institution, the majority of responding institutions had delegated responsibility for copyright

to a position or office explicitly labeled copyright. In contrast, respondents to the 2008 survey most often held the position of senior library administrator. Blanket licensing was an accepted approach to managing copyright across Canadian universities in 2008, but by 2015 it had become a live issue, with roughly half of the respondents indicating their institutions had terminated or were planning to terminate their blanket license.

**Conclusion** – In just seven years we have witnessed a significant increase in specialized attention paid to copyright on Canadian university campuses and in the breadth of resources dedicated to helping the university community understand, comply with, and exercise various provisions under Canadian copyright law, which include rights for creators and users.

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## Introduction

The instrumental role of copyright in Canada is to properly balance two competing ends: protection of creators' private rights to stimulate the creation of new works, and wide dissemination of creative works to advance the public interest in learning, innovation and cultural enrichment (*Théberge v. Galerie d'Art*, 2002, para. 30). Observing that "Canadian universities have not generally been proactive in managing copyright and knowledge transfer" (p. 7) while the complexity and contested nature of copyright's balancing act intensify steadily, Horava (2010) conducted a survey in the summer of 2008 to explore how academic libraries and their parent institutions view and manage communication about copyright.

At the time of the 2008 survey, a blanket reprographic licensing regime existed across Canada's publicly funded primary and secondary (K to 12) schools, colleges and institutes, and universities. The regime was formed over the decade following the 1988 Copyright Act amendments that expanded the scope of managing copyright collectively. One product of that round of statutory reforms was CanCopy, a literary works collective now called Access Copyright (AC), which has operated since 1989 throughout Canada except in the province of Quebec (Friedland, 2007). Quebec's literary works collective, Copibec, was formally established in 1998 (Soderstrom, 1998). Educational institutions entered into blanket

licensing primarily due to uncertainty regarding whether classroom copying can qualify as fair dealing under the Copyright Act (Graham, 2016).

Within two years of Horava's (2010) survey, discord was palpable in the post-secondary copyright realm as an initial attempt to renew another AC model blanket license agreement was unsuccessful. Shortly after negotiations broke down, AC filed its first proposed tariff for post-secondary educational institutions in March 2010, which, to date, has yet to be certified (Copyright Board of Canada, 2010). The decision of some institutions not to renew their AC license after the August 2010 expiry date marked the beginning of a movement away from blanket licensing. Unrest was heightened by legislative and judicial proceedings in the last quarter of 2011. Parliament embarked on yet another attempt to modernize the Copyright Act that had better prospects of success due to the majority government, and in an unprecedented two-day period the Supreme Court of Canada heard a total of five copyright cases.

Two pivotal events brought matters to a head in mid-2012. First, Parliament passed An Act to Amend the Copyright Act (2012), which, among other things, expanded the "user's right" (CCH v. LSUC, 2004, para. 12, 48) of fair dealing to include education. Second, the Supreme Court delivered its rulings in the five copyright cases (*Alberta (Education) v. AC*, 2012; *ESA v. SOCAN*, 2012; *Re:Sound v. MPTAC*, 2012; *Rogers v.*

*SOCAN, 2012; SOCAN v. Bell, 2012*), which have since sparked much legal and academic debate, an example being the collection of essays entitled *The Copyright Pentalogy: How the Supreme Court of Canada Shook the Foundations of Canadian Copyright Law* (Geist, 2013a). Of critical importance to educators was the pentalogy case in which the Court determined that teachers' copying of short excerpts for classroom use can qualify as fair dealing if, on a properly conducted analysis, the dealings, on the whole, can be shown to be fair (*Alberta (Education) v. AC, 2012*).

The subsequent emergence of a "fair dealing consensus" among educators (Geist, 2012) prompted many institutions to revise their copyright management approach, taking into account the fair dealing ruling in *Alberta (Education) v. AC (2012)* and expanded statutory fair dealing provisions (e.g., Noel & Snel, 2012; Universities Canada, 2012). K to 12 schools outside of Quebec withdrew from blanket licensing in 2013 (e.g., Geist, 2013b), but in 2015 the extent to which universities had followed suit was unclear. Factors contributing to a climate of uncertainty were the Copyright Board's post-secondary tariff proceedings, copyright lawsuits against two blanket licensing opt-out universities (Access Copyright, 2013; Copibec, 2014), and, for institutions covered by a five-year AC blanket license that became available in Spring 2012, the question of whether or not to renew before the license expired in December 2015.

Since the authors are responsible for copyright at our respective institutions, we were interested in discovering how the recent major developments in copyright law have affected copyright practices and approaches at other universities. We learned that Horava had no plans to update his 2008 survey but received his encouragement to pursue a similar investigation ourselves (personal communication, September 14, 2014). We therefore undertook this study to explore the current state of copyright education, permissions management, and copyright policy

development at Canadian universities as well as what has changed in these areas over the past five to seven years.

## Literature Review

The two main issues examined by the 2008 survey were the locus of responsibility for copyright within respondents' library and university, and challenges encountered in educating university community members about copyright (Horava, 2010). Almost 60% of respondents to the 2008 survey held the senior administrative role in their library while only four respondents (6%) were copyright officers. Responsibility for copyright within respondents' institutions was roughly equally often located in the library, in central administration, or shared by the library and another campus unit (each representing about 30% of all responses). The survey responses thus revealed a wide variety of institutional approaches to managing copyright and educating the university community.

Among the challenges identified by the 2008 survey respondents was a lack of institutional coordination in copyright management and education (Horava, 2010, p. 10). Others were concerned about overlaps between copyright and various kinds of licensing, including blanket licensing and licensing of electronic resources. Horava's (2010) recommendation that library websites should "explain the university licence with copyright collectives" (p. 28) confirms blanket licensing was then the status quo. Doubts about its necessity were nonetheless voiced by respondents in comments such as the following: "I suspect we are often licensing and paying for access that is available to us under fair dealing esp. since the CCH case. I think an argument could be made that we no longer need Part A of the Access Copyright licence" (Horava, 2010, p. 21).

In 2008, few empirical studies were available on academic library perceptions and practices regarding copyright communication (Horava, 2010). Although they remain relatively scarce, a

more recent investigation in this area is a multiple-case study by Albitz (2013) on how research universities manage copyright education. Using Mintzberg's organizational model as a theoretical lens, Albitz (2013) conducted semi-structured interviews with 11 copyright officers at member institutions of the U.S.-based Consortia on Institutional Cooperation. Among the topics explored were the locus of copyright education and copyright officers' responsibilities, credentials, and perceptions of authority. Albitz found that it is most important for the copyright officer at research universities to hold a Juris Doctorate in intellectual property law, and that it is helpful but somewhat less important for the position to be located within the library rather than central administration.

Applying a critical theory perspective, Di Valentino (2013) assessed understandings of copyright law as reflected in fair dealing policies adopted by Canadian universities outside of Quebec. This inquiry was guided by an interest in "reducing schools' reliance on private contracts and in promoting awareness of fair dealing rights, and in reversing the trend of basing copyright compliance on the avoidance of liability, which prevents users from taking full advantage of their rights" (Di Valentino, 2013, pp. 14-15). The study's examination of institutional copyright websites showed that while most universities had a fair dealing policy or set of guidelines, the presented copyright information was at times explained inconsistently, was inaccurate or unnecessarily restrictive, or was indicative of a strong tendency toward risk aversion.

In another investigation, Di Valentino (2015) extended Horava's (2010) study by "looking at the issue from the other side" (p. 5). Faculty at Canadian universities outside of Quebec were surveyed on their understanding of institutional copyright policies and services and their practices regarding copyright compliance. Di Valentino's (2015) findings established that faculty were broadly aware of institutional

copyright policies, but 40% of respondents were unsure about whether copyright training was available. Faculty appeared to be comfortable when using publicly accessible Internet content in class but much less confident about the permissibility of making an electronic copy of excerpts for course use.

## Aims

The aim of our 2015 survey was to discover what has changed in the copyright practices and approaches of Canadian universities since Horava's 2008 survey. Three areas of central interest were:

1. copyright education, including instructional methods and topics;
2. copyright policy and the status of blanket licensing; and
3. permissions management for copied course materials distributed via coursepacks (collections of readings and other course materials selected by instructors), print and electronic reserve (e-reserve), and the institutional learning management system (LMS).

Within these three areas we sought to identify the locus of responsibility; to find out what changes, if any, had occurred within the past five years; and to identify institutional copyright challenges.

## Methods

The methods and survey questions used in our study are chiefly adapted from those employed by Horava (2010). Both researchers obtained approval for the study's protocols from the research ethics review office at our home institutions. Because our investigation, like that of Horava's, was national in scope, the survey and communications to invited respondents were translated into French. Our web-based survey was created using an instance of LimeSurvey hosted by the University of Lethbridge Library. Two parallel versions of the

survey were created, affording the option for participants to respond in either English or French. Survey responses received in French were translated into English.

Because the spotlight on copyright in Canada had begun to intensify in 2010, questions about changes in practices asked respondents to reflect on the past five years. Unlike Horava's study, our survey was completely anonymous to encourage wide participation. Another point of divergence was our decision to focus on institutional approaches and practices rather than those belonging to the university library, since institutions may choose to situate responsibilities for copyright outside of the library. As well, given that Di Valentino (2013) had recently looked at information about copyright and fair dealing on Canadian university websites, we excluded questions about copyright webpages.

We also chose to look at two areas not covered by the 2008 survey—permissions clearance and blanket licensing—as they are pertinent in this time of flux within national and international educational copying contexts (e.g., *Cambridge v. Becker* (2012); *Cambridge v. Becker* (2016); *Cambridge v. Patton* (2014)). A draft version of the survey was pre-tested by two library colleagues at Canadian colleges. Their feedback is reflected in the final version comprising 18 open- and closed-ended questions (see the Appendix), which is similar in length to Horava's (2010) 2008 survey containing 19 questions.

**Table 1**  
**Survey Respondents by Consortium, 2015**

	Member Libraries	2015 Respondents	Response Rate
CAUL	16	9	56%
BCI	19	9	47%
OCUL	21	12	57%
COPPUL	23	18	78%
Totals/Average	79	48	61%

Applying Horava's approach, an invitation to complete our survey was sent to the university librarian or library director at the member institutions of Canada's four regional academic library consortia: Council of Atlantic University Libraries (CAUL), Bureau de Coopération Interuniversitaire (BCI), Ontario Council of University Libraries (OCUL), and Council of Prairie and Pacific University Libraries (COPPUL). Recipients were asked to have the survey completed by the institutional staff best suited to do so. The 79 universities invited to participate in our survey is a slightly larger total than the 75 institutions invited to complete Horava's 2008 survey.

Our 2015 survey opened for one month in early March 2015, with a reminder issued about one week prior to the closing date. Since we desired a response rate comparable to that of the 2008 survey but the initial response rate was low, with the approval of our research ethics offices we re-opened the survey for another month in mid-October 2015. A reminder was sent about three weeks later.

## Results

### Respondents

Our 2015 survey produced 48 responses: 22 were received in March-April 2015 and a further 26 followed in October-November 2015. The overall 61% response rate fell short of the 84% response rate obtained by Horava (2010, p. 9),

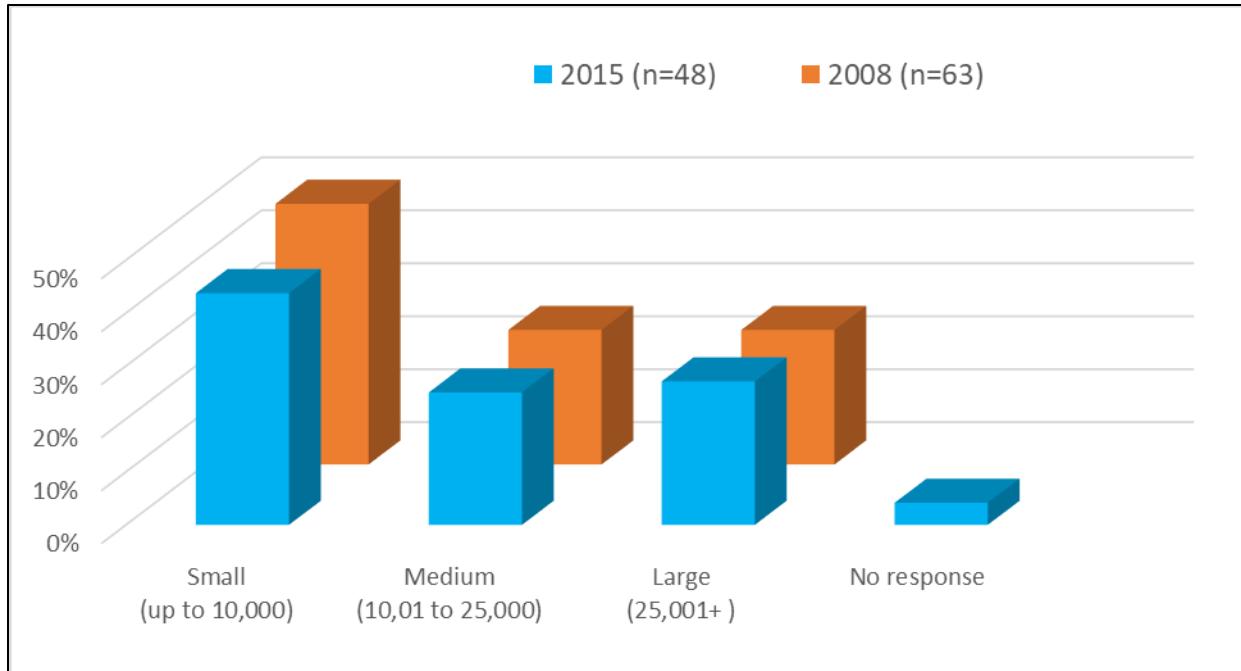


Figure 1  
Survey respondents by institutional size (FTE), 2015 and 2008.

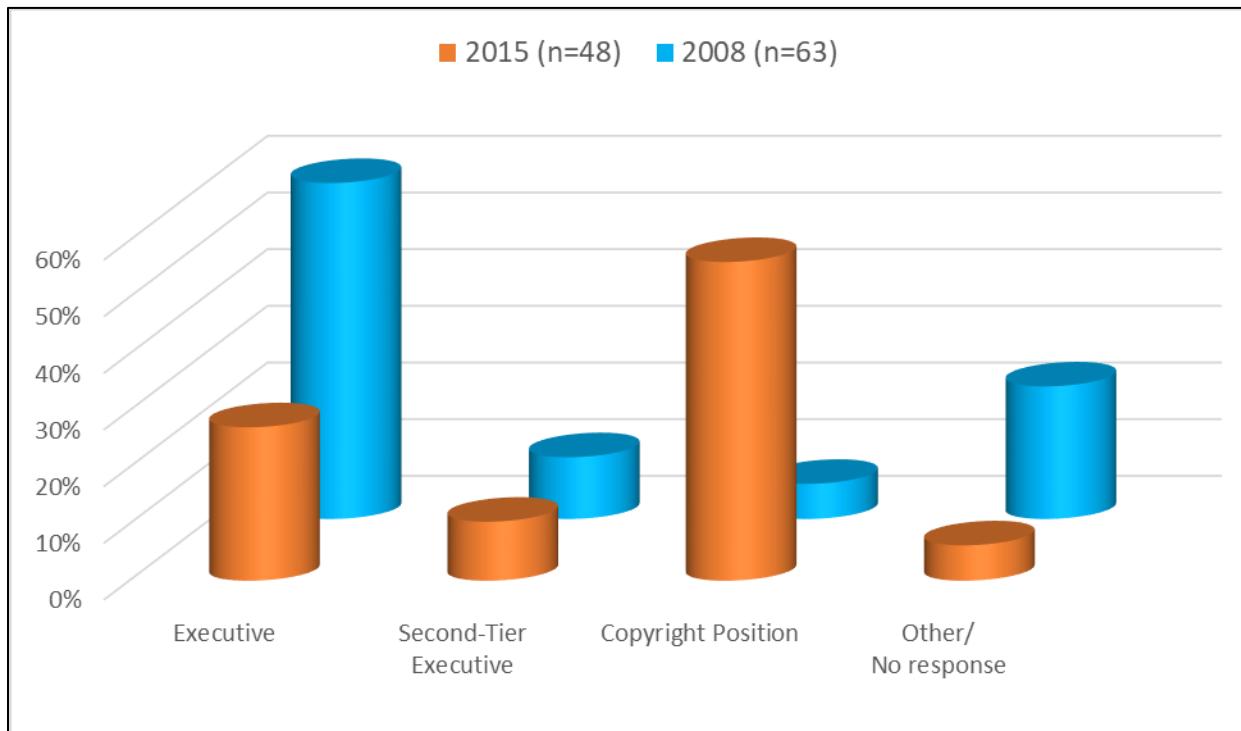


Figure 2  
Survey respondents by position title, 2015 and 2008.

but represents a sizable improvement over the initial response rate of 28%. All geographic regions of Canada were represented in responses to the 2015 survey: 38% were from Eastern Canada (CAUL) and Quebec (BCI), 25% were from Ontario (OCUL), and 37% were from Western Canada (COPPUL). Response rates by consortium ranged from a low of 47% to a high of 78% (see Table 1). Horava (2010) did not report the consortial distribution of 2008 survey responses.

The 2008 and 2015 surveys both asked about the size of respondents' institutions, based on full-time equivalent (FTE) students. As seen in Figure 1, respondents' institutions in 2008 (Horava, 2010, p. 11) and 2015 were proportionally similarly sized. For both surveys, almost half of the respondents were from small institutions, with the other half roughly equally split between medium and large institutions.

One difference between the results of the two surveys is a remarkable growth in the number of institutional positions specifically dedicated to copyright in 2015, as indicated in Figure 2. In 2008, 59% of survey respondents held executive positions (university librarian or library director) and only 6% held copyright-specific positions (Horava, 2010, p. 11). By 2015, 56% of respondents held copyright positions and only 27% held the senior library executive position. In both 2008 and 2015, about 10% of respondents held second-tier executive (associate university librarian) positions.

### ***Locus of Responsibility***

The 2015 survey questions on the position, department or office responsible for copyright education, policy and permissions were open-ended and did not ask respondents to specify the administrative locus associated with each

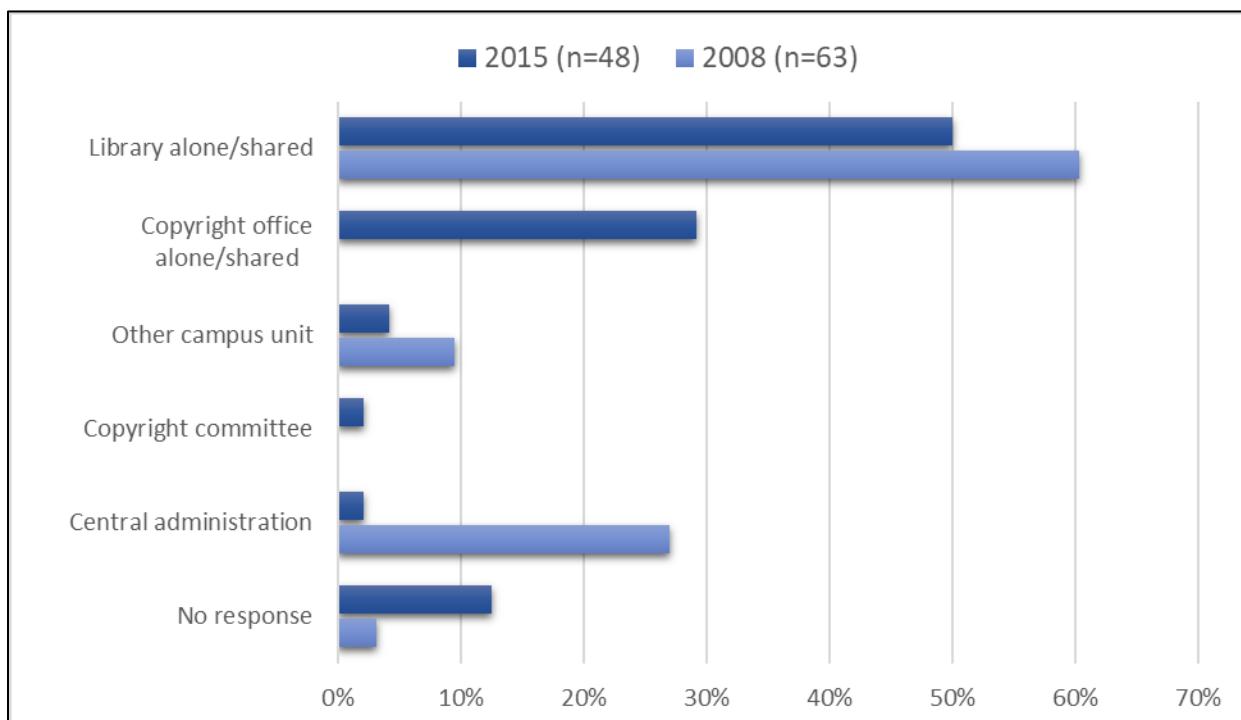


Figure 3  
Responsibility for copyright education, 2015 and 2008.

answer. Responses that referenced a copyright office or position within the library were coded under "Library." When two or more positions or campus units were mentioned, the response was coded under "[first-named unit] shared" (e.g., "Library shared"). Our survey results thus do not allow us to make a clear distinction between copyright offices managed by the library and copyright offices managed by other campus units, as only some responses happened to name the locus of administrative oversight associated with the identified responsible unit or position.

#### *Responsibility for Copyright Education*

In 2008 (Horava, 2010, p. 13) and 2015, most respondents (between 50% and 60%) said the locus of institutional responsibility for copyright education resided with the university library acting either alone or with other campus units.

Figure 3 indicates the campus unit next most often identified as being responsible for copyright education in 2015 (27%) was the copyright office acting alone or in a shared capacity, but in 2008 it was central administration (29%). Thus, between 2008 and 2015 some movement is discernable, as responsibility for copyright education formerly located in central administration appears to have been transferred to the copyright office.

#### *Responsibility for Policy or Services for Owners of Copyrighted Materials*

Both surveys examined the locus of responsibility for matters pertaining to copyright owned by employees and students in works created in the course of employment or academic studies. The questions probing this issue were somewhat different, however. The

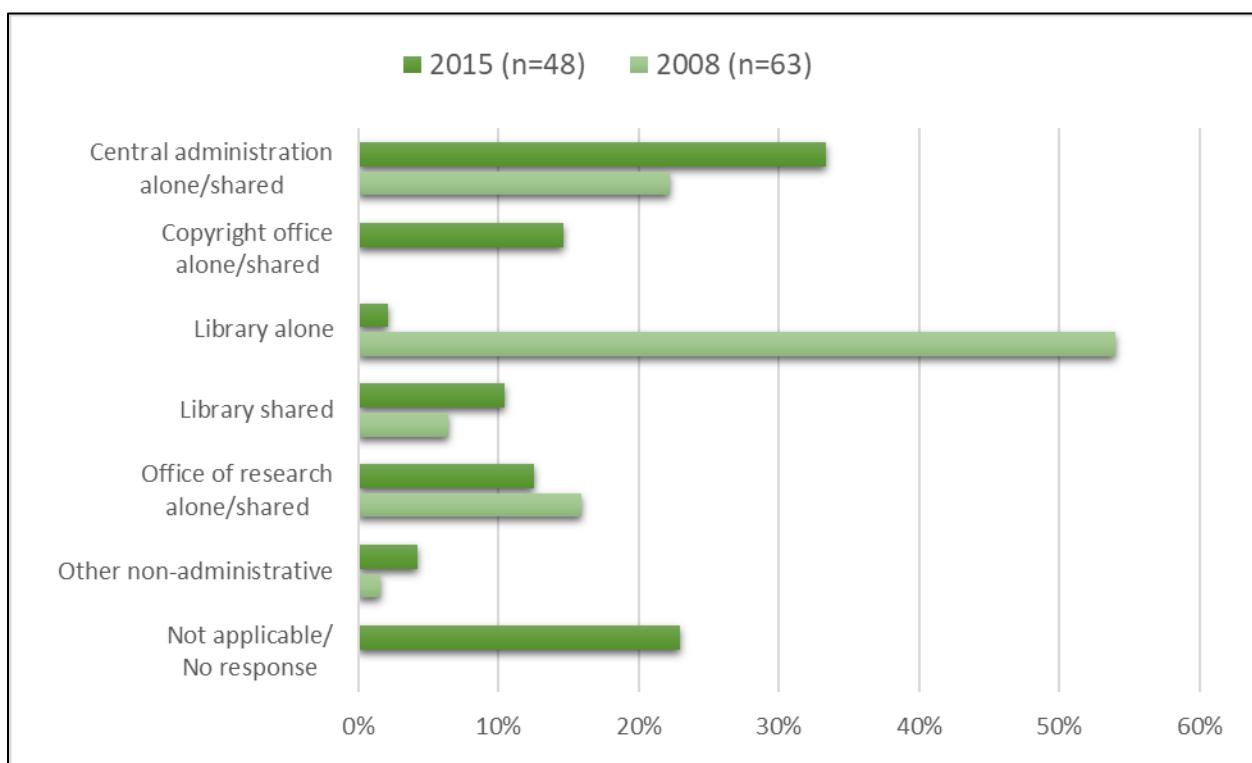


Figure 4  
Responsibility for policy (2015) and service (2008) provisions for copyright owners.

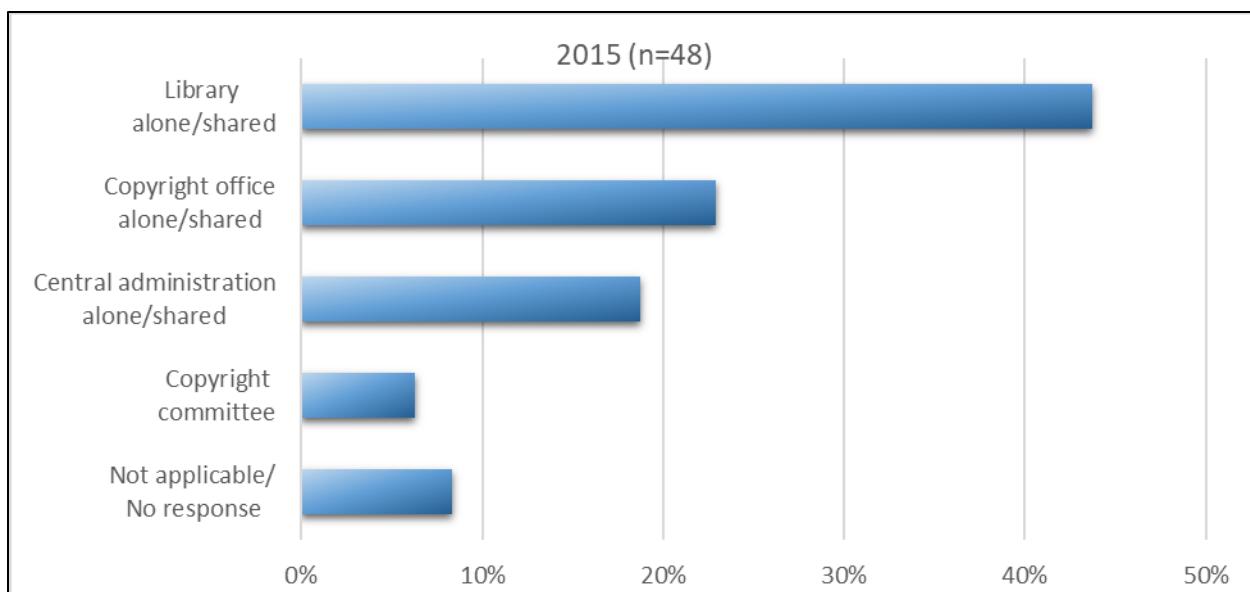


Figure 5  
Responsibility for policy on use of copyrighted works, 2015.

2008 survey asked whether a campus unit other than the library was responsible for managing copyright from a rights-holder's perspective and if they answered "yes," respondents were asked to specify the unit (Horava, 2010, p. 35). The 2015 survey instead asked which campus unit was responsible for developing policies on ownership of copyrighted materials. Despite differences in how they are framed, the gist of both questions is the identity of the campus unit responsible for helping authors and other creators understand and protect their copyright interests.

As shown in Figure 4, more than 50% of responses to the 2008 survey indicated the library was responsible for helping owners protect their copyright interests, and a further 40% said this responsibility was held by central administration or the office of research (Horava, 2010, p. 15). The 2015 responses to the somewhat different question about responsibility for copyright ownership policy indicate the responsible unit was most often central administration alone or in a joint capacity. But in 2015 when responsibility for policy on copyright owners' rights was situated outside of central

administration, the responsible units were roughly equally often the copyright office, the office of research, or the library, each acting alone or with other campus units.

#### *Responsibility for Policy on Uses of Copyrighted Materials*

The locus of responsibility for institutional policy relating to copyright compliance and use of copyrighted materials was a question explored only in the 2015 survey. Figure 5 indicates that by far the campus unit most often holding this responsibility, alone or in a joint capacity, was the library, followed at a distance by the copyright office, which together account for two-thirds of responses. The extent to which central administration and copyright committees led user-focused policy development is relatively modest as they were identified as the responsible unit by under 20% and under 10% of respondents, respectively.

#### *Responsibility for Permissions Clearance*

Permissions clearance is the process of first assessing whether a work is protected by

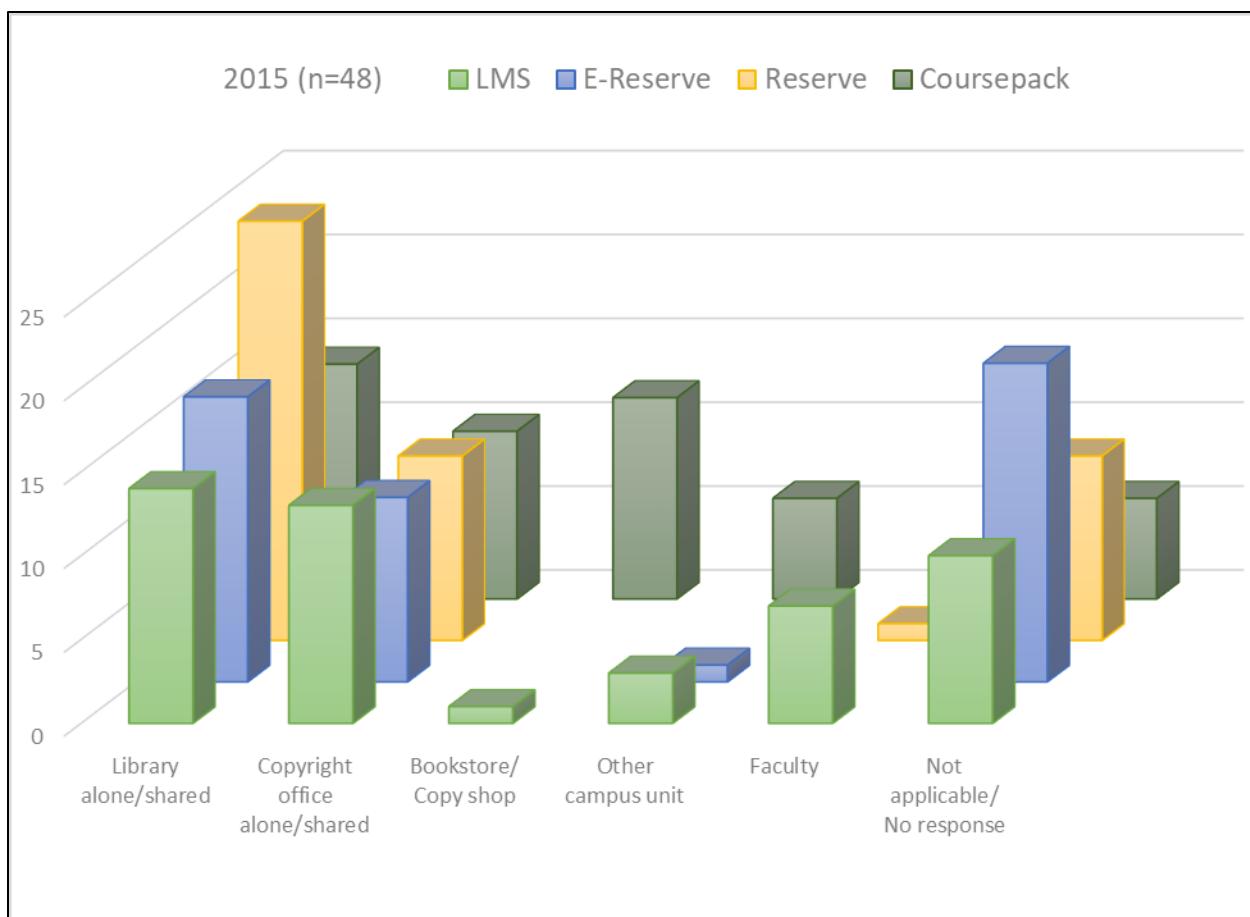


Figure 6  
Responsibility for permissions clearance, 2015.

copyright and whether permission to use the work is needed, and then, when necessary, obtaining copyright owner consent. The Supreme Court decisions in *CCH v. LSUC*, 2004 and *Alberta (Education) v. AC*, 2012 as well as the 2012 Copyright Act amendment that added education as a fair dealing purpose together provide educational institutions with a much-enriched understanding of the applicability of statutory user's rights to educational uses of copyrighted works. Institutional responsibility for clearing permissions for course-related use of copyrighted materials was a second issue explored only in the 2015 survey.

Figure 6 shows that the library, acting alone or in a shared capacity, was across the board most often identified as being responsible for

permissions clearance for materials distributed via the LMS, e-reserve, print reserve, and coursepacks. The unit next most often responsible for permissions clearance was the copyright office, alone or shared, for all distribution modes except coursepacks where the bookstore or commercial copy shop was in second place. LMS permissions clearance was the responsibility of the teaching faculty at seven institutions.

#### *Responsibility for Blanket Licensing*

A third aspect of copyright responsibility considered only in the 2015 survey pertains to decisions on institutional blanket licensing. As presented in Figure 7, 50% of respondents said this responsibility was the purview of central administration alone or in a shared capacity, but

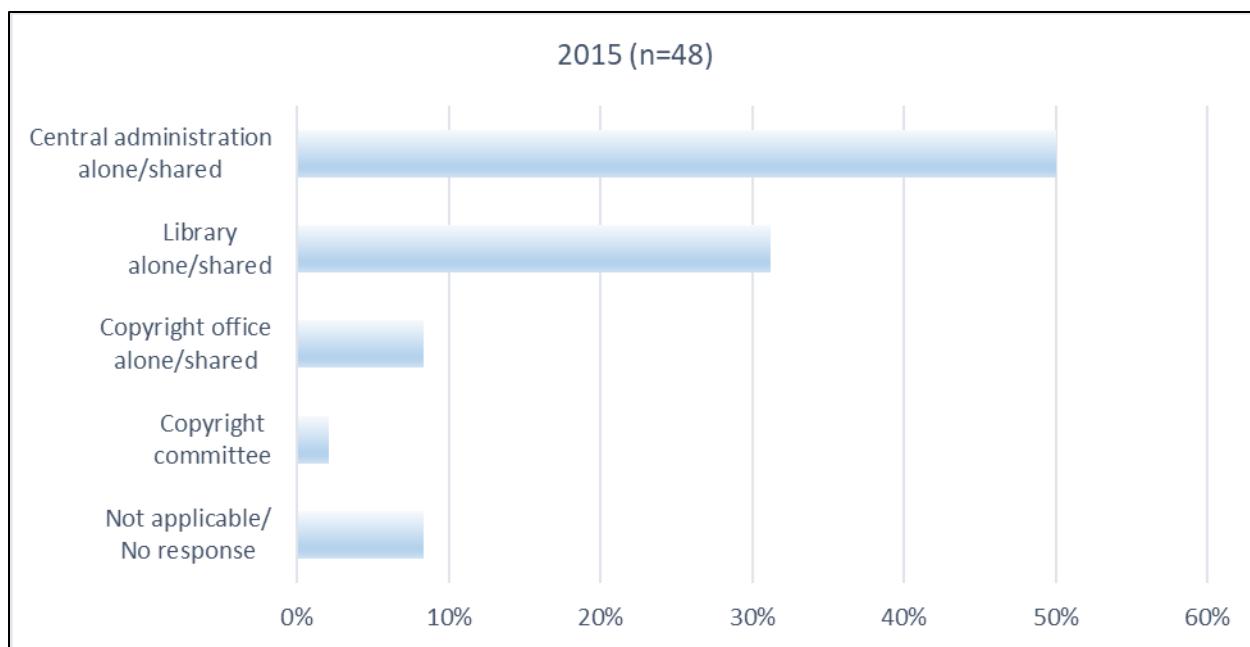


Figure 7  
Responsibility for blanket licensing decisions, 2015.

Table 2  
Methods Used to Educate Users of Copyrighted Works, 2015 and 2008

User Education Method	Frequency of Response 2015 (n=45)	Frequency of Response 2008 (n=62)
individual assistance	33.3%	77.4%
information literacy	68.9%	66.1%
faculty liaison/outreach	28.9%	64.5%
reference service	---	62.9%
webpage	86.7%	62.9%
printed information	17.8%	50.0%
online tutorial	4.4%	19.3%
other	24.4%	11.2%
none	2.2%	4.8%

more than 30% indicated issues relating to blanket licensing were decided by the library acting alone or jointly with other campus offices. Thus, most institutions considered blanket licensing to be a matter for either central administration or the university library. About 10% indicated blanket licensing matters to be the responsibility of the copyright office acting alone or with other offices, or a copyright committee.

### *Copyright Education*

#### *Education for Users of Copyrighted Works*

Although the 2008 and 2015 surveys both asked about methods used to educate users of copyrighted materials, the question was posed in different ways. The 2008 survey presented a list of education methods and asked respondents to check off all that applied, whereas the 2015 survey question was open-

ended, resulting in an inability to make exact comparisons between the two sets of responses. Nevertheless, in most cases the categories of education methods arising in 2015 responses were mappable to those used in the 2008 survey (Horava, 2010, p. 22), presented in Table 2. In 2008, users most often received education via individual assistance, but in 2015 responses the most frequently mentioned education method was webpages. Information literacy was the second most frequently used education method in 2008 and 2015. In 2015, no respondents mentioned reference service as an education method, and unlike 2008 respondents, very few said print materials were used. "Other" user education methods noted in 2015 were e-mail, guidelines or policy statements, and mailings or newsletters. Very few 2015 respondents—about 2%—said no copyright user education was offered.

#### *Education for Creators of Copyrighted Works*

An open-ended question in the 2015 survey asked about methods used to educate creators about their copyrights. For ease of comparing user education methods to those used in creator education, Table 3 summarizes the latter under the same categories used in Table 2, which were borrowed from Horava (2010). Responses to the 2015 survey indicate the most frequently identified method of providing copyright

information to both creators and users of copyrighted works was webpages. "Other" means of providing copyright education to creators mentioned by 2015 survey respondents were collective agreements, e-mail, guidelines or policy statements, mailings or newsletters, and university committees. More than 13% of responses indicated copyright education for creators was not offered.

#### *Copyright Education Topics*

The topics addressed in education directed at users and creators of copyrighted works are another aspect of copyright education considered only in the 2015 survey. Table 4 reveals the two most frequently identified copyright user education topics to be copyright infringement exceptions (users' rights), with strong emphasis placed on the fair dealing provisions of the Canadian Copyright Act. As evidenced in Table 5, the three most frequently mentioned topics of education directed at creators of copyrighted works were creators' or owners' copyrights, negotiating publisher contracts or addenda, and open access. Four topics are common to Tables 4 and 5, indicating their relevance to both users and creators of copyrighted works: fair dealing, copyright basics (key provisions of the Copyright Act), copyright permissions or licensing, and open access.

Table 3  
Methods Used to Educate Creators of Copyrighted Works, 2015

Education Methods for Creators	Frequency of Response (n=45)
individual assistance	24.4%
information literacy	37.8%
faculty liaison/outreach	22.2%
webpage	64.4%
printed Information	6.7%
other	22.2%
none	13.3%

Table 4

## Topics Addressed in Education for Users of Copyrighted Works, 2015

Education Topics	Frequency of Response (n=45)
fair dealing	66.7%
exceptions to infringement	28.9%
copyright basics	22.2%
copyright permissions or licensing	22.2%
copyright compliance and ethical use of protected works	20.0%
open access	20.0%
course-related copying	17.8%
images	13.3%
LMS use	13.3%
digital or multimedia works	11.1%
how to obtain help with copyright issues	11.1%
coursepacks	6.7%
motion pictures and videos	6.7%
library-licensed resources	6.7%
reserve or e-reserve	6.7%
materials accessed or streamed from the Internet	6.7%
attribution or source citation	4.4%
public domain	4.4%
blanket licensing	2.2%
not applicable or in development	4.4%

*Changes in Copyright Education*

Most respondents (77%) said their institution's approach to copyright education has changed appreciably over the past five years. Table 6 summarizes several broad themes identified in respondents' brief explanations of what has changed.

*Copyright Policy**Policy Scope and Content*

The 2008 survey asked whether university copyright policy guided, or was guided by, the library's provision of copyright information and vice versa (Horava, 2010, p. 35). Rather than

looking at the extent to which university copyright policy and library-provided copyright information were influenced by the other, the 2015 survey sought to determine the prevalence of institutional copyright guidelines or policies as well as the issues they address.

Of the 48 respondents to the 2015 survey, 81% confirmed the existence of institutional guidelines or policy pertaining to copyright. Just under 70% of respondents who shared the topics of institutional policy mentioned fair dealing, and 41% said policy covered copyright basics. The specificity of the subject matter of institutional copyright policies appears to vary widely as respondents identified topics ranging from the narrow issue of defining the meaning of "short excerpt" to the broad matter of the public domain, as evidenced in Table 7.

Table 5

## Topics Addressed in Education for Creators of Copyrighted Works, 2015

Education Topics	Frequency of Response (n=43)
creators' or owners' copyrights	53.5%
negotiating publisher contracts or addenda	37.2%
open access	37.2%
copyright basics	18.6%
Creative Commons licensing	11.6%
fair dealing	11.6%
copyright permissions or licensing	11.6%
publishing protocols, models, avenues	9.3%
predatory publishing	9.3%
self-archiving	7.0%
granting agency policies	4.7%
author-side publication charges (APCs)	2.3%
theses and dissertations	2.3%
moral rights	2.3%
faculty collective agreement	2.3%
waiving or sharing copyrights	2.3%
not applicable or in development	14.0%

Table 6

## Aspects of Copyright Education That Have Changed, 2015

Broad Themes	Frequency of Response (n=40)
education programs launched or intensified	65.0%
new copying environment due to terminated blanket license	35.0%
education programs moved to copyright office	30.0%
new or revised help pages and guidelines	30.0%
new case law and statutory amendments	20.0%
new administrative structures or processes	10.0%

*Policy Establishment and Revision*

The 2015 survey asked respondents to identify the date on which their institution's copyright policy was established as well as the date on which the policy was last revised. Table 8 indicates more than half of the institutions (54.2%) had established copyright policies in 2011 or later, which likely accounts for most of the slightly greater proportion of institutions (56.3%) that did not provide a policy revision date.

About 63% of survey respondents were unable to identify the main areas of change in the most recent copyright policy revisions or did not respond to this question. Areas of policy revisions mentioned by four to six respondents were Copyright Act amendments, fair dealing, outcomes of copyright court cases, and educational exceptions to infringement. Other policy revision areas identified by one or two respondents were library licenses, blanket licensing, digital copies, a shift to individual

Table 7

Topics Addressed by Institutional Copyright Guidelines or Policy, 2015 (n=39)

Policy Topics	Frequency of Response
fair dealing	69.2%
copyright basics	41.0%
course-related copying	15.4%
public performances	5.1%
staff policy regarding copyright compliance	5.1%
copyright office	2.6%
definition of short excerpt	2.6%
exhibition rights	2.6%
use of images	2.6%
moral rights	2.6%
copyright permissions	2.6%
ownership of works produced by university employees	2.6%
public domain	2.6%

Table 8

Copyright Policy Year of Establishment and Last Revision, 2015

Time Period	Policy Established	Policy Last Revised
	Frequency of Response (n=48)	Frequency of Response (n=48)
before 1997	8.3%	--
between 1997 and 2010	8.3%	4.2%
2011 and after	54.2%	39.6%
not applicable/no response	29.2%	56.3%

responsibility for copyright compliance, and copyright and teaching.

Institutions in 2015 most often used the university's copyright website to communicate copyright policy to their communities, as shown in Table 9. The next most frequently mentioned means of communicating institutional policy on copyright were e-mail and meetings.

#### *Participation in Blanket Licensing*

Although publicly funded Canadian post-secondary institutions were blanket licensees

from the 1990s to at least 2010, by 2015 some had announced their withdrawal from the blanket licensing regime (Katz, 2013). About 44% of respondents to the 2015 survey said their institution had terminated their blanket license and 4% did not answer the question about blanket licensing, leaving just over half of respondents, 52%, whose institutions remained blanket licensees. But an even greater proportion, 62%, said their institution had opted out of blanket licensing in the past. Furthermore, five respondents (10%) at institutions holding an AC blanket license said plans to exit the license were underway.

Table 9

## Methods of Communicating Copyright Policy to University Community Members, 2015

Communication Method	Frequency of Response (n=48)
copyright website	60.4%
e-mail	29.2%
meetings	29.2%
university news	16.7%
workshops	14.6%
personal communication by staff specialists	8.3%
administrative memos	6.3%
newsletters	6.3%
posters	4.2%
click-through agreement on LMS	2.1%
checklists	2.1%
not applicable/no response	22.9%

Table 10

## Consideration of Library Licenses as Permission Sources for Course Readings, 2015 (n=48)

	In-House Coursepacks	Copy Shop Coursepacks	LMS Readings	Print Reserve Readings	E-Reserve Readings
yes	66.7%	12.5%	52.1%	70.8%	58.3%
no	8.3%	18.8%	12.5%	10.4%	6.3%
uncertain	10.4%	18.8%	31.3%	10.4%	4.2%
not applicable	10.4%	45.8%	4.2%	4.2%	27.1%
no response	4.2%	4.2%	0.0%	4.2%	4.2%
	100.0%	100.0%	100.0%	100.0%	100.0%

Table 11

## Format of Copyright Permission Tools, 2015

Tool Format	Frequency of Response (n=23)
permissions clearance services and education	47.8%
copyright management software	30.4%
guide for copyright and permission decisions	21.7%
copyright clearance form for instructors	13.0%
look-up tool for permitted uses of licensed content	8.7%
model permission clearance letters	8.7%
tool offered by a copyright collective	8.7%
website information	8.7%

Table 12  
Institutional Copyright Challenges, 2015

Challenge Area	Challenge Themes	Frequency of Response
Education (n=43)	communicating copyright information effectively and comprehensively	76.7%
	ensuring copyright/licensing compliance	30.2%
	overcoming obstacles to compliant practices	18.6%
	addressing staffing and staff expertise requirements	9.3%
	dealing with legal and statutory interpretation uncertainties	7.0%
	evaluating a possible move away from blanket licensing	4.7%
	helping faculty and students understand their copyrights and publication choices	4.7%
Policy (n=38)	fostering policy understanding and compliance	57.9%
	applying policies appropriately	21.1%
	establishing or updating institutional policy	15.8%
	monitoring copyright and licensing compliance	7.9%
	achieving appropriate staffing for policy-related education and services	7.9%
	addressing specific policy-related issues	7.9%
Permissions (n=35)	managing administrative challenges of permissions clearance service	42.9%
	helping users understand why permissions are important and how to assess them	34.3%
	acquiring permissions for specific kinds of works	31.4%
	securing administrative support for permissions staffing, systems or tools	22.9%
	acquiring permissions generally	5.7%

### ***Copyright Permissions***

#### *Applicability of Library Licenses*

The first of two 2015 survey questions on copyright permissions asked if the applicability of library licenses is assessed when permissions are cleared for course readings distributed via coursepacks, the LMS, print reserve, or e-reserve. As indicated in Table 10, between 52% and 71% of respondents said that library licensing is taken into account when permissions are cleared for readings distributed in all modes except coursepacks produced by commercial copy shops. The greatest degree of uncertainty about whether library licenses are considered in the permissions clearance process pertained to readings distributed via the LMS.

### ***Permission Tools***

In response to the second question about permissions, 52% of respondents said one or more tools had been developed to help university community members clear copyright permissions, 44% indicated no tools had been developed, and 4% said the question was inapplicable. Table 11 summarizes the formats of permission tools developed by universities, as described by respondents.

### ***Educational, Policy, and Permissions Challenges***

In each of the three key areas probed by the 2015 survey, respondents were asked to identify the most significant challenges faced by their institutions. Single dominant concerns surfaced

within the areas of copyright education and copyright policy. For copyright education, the institutional challenge mentioned in 77% of responses was effective and comprehensive communication of copyright information. For copyright policy, fostering understanding of and compliance with institutional policy was the challenge noted in 58% of responses. No single concern was dominant in the area of permissions challenges, but managing administrative aspects of permissions service and helping users understand and perform permissions clearance were identified in 43% and 34% of responses, respectively. Table 12 outlines themes that arose within the challenges identified in all three areas.

The following are examples of comments submitted by respondents in the three areas of copyright challenges faced by universities. Some of the mentioned challenges pertained to more than one challenge area:

#### **Education:**

- “Staffing for an intensive educational effort. Entrenched practices of some faculty and staff members.”
- “Meet with lecturers, make existing class notes compliant, ensure that teaching staff comply with institutional policy on fair use.”
- “Reaching everyone. Multi-campus environment.”
- “Creating buy-in from faculties and departments, who may simply view copyright clearance and related steps as hindrances or obstacles, rather than as a fundamental component of post-secondary education.”

#### **Policy:**

- “Connecting the institutional policy to specific compliance practices/procedures.”
- “Re-writing the Fair Dealing Guidelines to make them more user-friendly, less

daunting, shorter while still being useful.”

- “Ensuring compliance with FD Policy and identifying individuals who will need assistance transitioning from working under the AC License to the FD Policy.”
- “We do not have a policy or guideline on converting physical AV media to formats that allow our institution to stream video content to distance students or web-based courses.”

#### **Permissions:**

- “Permission for French documents (especially European, costly and long delays).”
- “Our permissions process is quite labour intensive. No database currently in place to support full workflow process.”
- “Materials in copyright but orphaned. Dealing with copyright with regards to music, lyrics, recordings etc.”
- “Reapplying for permissions – keeping track of continuing use and when permissions expire. Ensuring instructors and staff are aware of which permissions need reapplication. Getting publishers to reply to requests in a timely manner.”

## **Discussion**

### ***Responsibility for Copyright***

Results of this study evidence several areas of marked change in the copyright practices and approaches of Canadian universities since 2008. While the library continued to play a prominent role in copyright education from 2008 to 2015, a shift in the locus of responsibility from central administration to the copyright office is notable. Our survey did not reveal reasons for this change, but a possible inference is that it was precipitated by foundational shifts in the copyright landscape that heightened concern

about copyright issues across Canadian universities and a perceived need for specialized copyright expertise.

A reverse shift took place in the area of copyright ownership policy or advocacy. While the library was most often responsible for promoting and protecting rights-holders' interests in 2008, the largest proportion of 2015 respondents—about one third—said responsibility for owner-focused policy was most frequently held, alone or jointly, by central administration. At the same time, the proportion of 2015 respondents who said this responsibility belonged to the library or copyright office, alone or with other units—one quarter—was not far behind.

The 2015 survey results show the university library most often played the lead role in permissions clearance for course materials made available to students via four common distribution modes. The unit next most frequently responsible for permissions clearance was once again the copyright office, acting alone or with others, for all distribution modes except coursepacks.

Overall, the 2008 and 2015 survey results indicate the library is the primary locus for most matters related to copyright. This attestation of the library's continued copyright leadership role within Canadian universities notwithstanding, in several cases the copyright office served as the institutional lead unit in copyright matters. Moreover, the position held by the majority of survey respondents in 2015 specialized in copyright, whereas in 2008 most respondents held the position of university librarian or library director.

### *Educational Approaches and Topics*

As more than three quarters of 2015 survey respondents said their institution's approach to copyright education had changed, methods used to educate university staff and students about copyright clearly evolved between 2008 and

2015. Compared to 2008, copyright user education in 2015 far less often involved individual assistance, faculty outreach, reference service, and print materials, but had become more heavily dependent on copyright webpages. On the other hand, reliance on information literacy remained strong, as about two-thirds of respondents in both 2008 and 2015 said their institution used this approach in copyright user education.

Copyright education for creators was not explicitly investigated in the 2008 survey, but in 2015, the most frequently used method of educating creators was making copyright information available via webpages, with information literacy in distant second place. It may be the case that more attention is paid to educating copyright users than copyright creators: while the proportion of respondents who provided no information about their institution's user education methods was very small, it was six times greater for creator education.

Only the 2015 survey explored the topics addressed in copyright education. Fair dealing was clearly a central concern, as it was identified as a focus of copyright user education by more than two-thirds of respondents. The next most frequently addressed topic in user-focused education, exceptions to infringement in general, was identified by roughly one-third of respondents. Fair dealing was also addressed in copyright education for creators, but not as frequently as creators' copyrights, negotiating publishing agreements, and open access.

The vast majority of 2015 survey participants' institutions provided copyright education that was directed most often at copyright users and was somewhat less frequently tailored to copyright creators. Tables 4 and 5 indicate fair dealing, copyright basics, copyright permissions or licensing, and open access were addressed in education directed at both groups. This suggests copyright educators recognize the importance of ensuring that their institutional communities

understand the fundamental interdependence of provisions for users' rights and creators' rights in the Copyright Act, given that everyone is both a user and creator of copyrighted material.

Fair dealing and open access promote the public interest in lawful, wide public use of protected intellectual works. At the same, they also assist creators who wish to build upon prior ideas and knowledge or disseminate their works broadly. Similarly, rights granted to copyright owners under the Act, including the right to authorize uses of their works, provide a means for creators to control certain uses of their works. When users wish to use protected works in ways not otherwise covered, knowing how to seek permissions properly will help users protect themselves against unintentional infringement.

The broad array of topics addressed in copyright education and the fact that respondents said the greatest change in this area was new or intensified educational programs evidence a serious commitment by Canadian universities to enhance awareness and understanding throughout their communities of users' and creators' rights under the Copyright Act.

### ***Policy Prevalence and Focal Points***

We assume 100% of institutions represented in the 2008 survey results held a blanket copying license, whereas only 52% of 2015 survey respondents said their university was a blanket licensee. This finding aligns with those of Di Valentino (2013) who reported slightly over half of the institutions in her sample (41 universities outside of Quebec) had an AC blanket license. The premise that almost all educational copying requires permission was questioned by a few of Horava's 2008 respondents, but by 2015, more than half of the universities responding to our survey had parted ways with blanket licensing or had definite plans to exit their license in the near future. Blanket licensing as a policy approach to copyright compliance is thus a live issue currently trending toward reliance on alternative approaches.

New developments have also unfolded in other aspects of copyright policy. Well above three quarters of the 2015 survey respondents said their university had instituted a copyright policy or guidelines. It is notable that more than half of responding institutions initiated copyright policy for the first time in 2011 or later. Likely related to this finding is the fact that several respondents said their institution adopted the 2012 revision of the fair dealing policy that was developed and recommended by the Association of Universities and Colleges Canada (now Universities Canada). As well, having a copyright policy in place was possibly a particular concern for institutions who were, or were moving toward, operating without a blanket license. Of the topics covered in copyright policy, the one identified in more than two-thirds of responses was fair dealing. The next most common focal point of policy—copyright basics—was mentioned in less than half of responses.

Taken together, these developments suggest institutional approaches to copyright policy in 2015 had evolved substantially since 2008. The proportion of universities opting out of blanket licensing was nearing 50% and adoption of institutional copyright policy was prevalent, with a primary focus on the user's right of fair dealing.

### ***Permissions Clearance Practices***

Responses to the 2015 survey indicate that library licenses for full-text resources are assessed by most universities during permissions clearance for all modes of distributing course readings except commercially produced coursepacks. All the same, roughly one-third of survey respondents did not know whether clearing permissions for materials distributed via the LMS took into account the potential applicability of library licenses. Reasons for this relatively high level of uncertainty level are unclear, but one respondent's comment raises an issue that may be applicable in settings where instructors are

responsible for LMS permissions clearance: "I have put 'Uncertain' . . . because we do provide the information and tool so that teaching faculty can check if use is covered by our licenses but we do not have data as to what level it is used."

More than half of the responding institutions said they had developed tools to help institutional community members clear copyright permissions. The form of those tools was most often permissions clearance services or education, or copyright management software. These findings point to considerable investment of various kinds of resources to enhance permissions assessment and management at Canadian universities.

### ***Challenges***

The challenges in copyright education identified by 2008 and 2015 survey respondents, on the whole, touch on similar themes, the most common in 2015 being effective and comprehensive communication of copyright information to all university community constituencies. This challenge is likely to remain an important and large undertaking because copyright encompasses inherently complex concepts and requirements that are difficult to reduce to simple, memorable ideas while remaining true to how the copyright system actually works.

In 2015, the most frequently identified challenges in the policy and permissions arenas were fostering copyright policy understanding and compliance, and managing administrative aspects of permissions, respectively. The former essentially covers much the same ground as the most frequently identified challenge in the area of copyright education: communicating copyright information effectively and comprehensively. Respondents' comments indicate administrative aspects of permissions challenges involve issues such as significant delays in securing permissions in a timely fashion and dealing with large volumes of uses

needing permissions clearance without adequate staffing levels.

The challenge themes arising from the 2015 survey collectively suggest universities appreciate the importance of ensuring that their communities and operations are properly guided by the provisions of current copyright law and licensing agreements. Interestingly, the lack of institutional coordination of copyright matters regarded by many 2008 survey respondents as a major organizational challenge (Horava, 2010, p. 27) did not arise as a strongly articulated concern in 2015.

### ***Limitations***

The overall goal of the 2015 survey was to gain a well-rounded picture of current institutional copyright practices and aspects that may have changed since 2008. A limitation of our study is that its response rate, while strong, was markedly lower than the rate achieved in the 2008 survey. Reasons for the lower response rate are unclear, although uncertainty regarding the outcomes of legal and tariff proceedings are likely contributing factors.

Another limitation is that our survey necessarily yields only a snapshot of copyright practices and approaches at a time when many Canadian universities held a blanket AC license with a December 2015 expiry date. Since our study was conducted just prior to this deadline, in several cases the current status of blanket licensing and other aspects of institutional copyright policy and practices may differ from the responses we received to licensing questions in 2015.

A further limitation is the omission of survey questions that might have shed more light on the administrative relationship between the copyright office and the library as well as the specific nature and scope of positions holding responsibility for various aspects of copyright. We decided against their inclusion to contain the length of the survey in order to encourage wide participation.

### **Future research**

Our study uncovered considerable growth in the number of copyright-specific positions since 2008. Because our survey did not ask whether these were new hires or the result of reallocation of existing personnel to a dedicated copyright position, however, this issue is worthy of investigation in a future study. We note that Horava (2010) also identified the role of copyright officers as an area for further research. Some ground work has already been laid by Patterson (2016) in an examination of the role of Canadian copyright specialists in universities. Additional areas warranting further inquiry include the copyright practices and approaches and role of copyright specialists in other types of educational institutions, such as K to 12 schools, community colleges, and polytechnical institutes.

### **Conclusion**

Framed as an update to Horava's 2008 survey, our study explored the extent to which Canadian universities have responded to several major developments in Canadian copyright law by adjusting their copyright practices and approaches. Horava (2010) noted new workflows and positions were developed over the 2000s to support a new priority on acquiring licensed digital content that occurred with little attention paid to copyright or the volume of information transfer. In contrast, our study results indicate a much-elevated level of copyright awareness is prevalent at Canadian universities, as evidenced by the topics covered in current copyright education and copyright policy and by the variety of tools and resources available to help users clear copyright permissions for teaching and research purposes.

A variety of approaches still exist, but shared practices may now be more common, as several respondents noted their institutional copyright policy was modeled on the 2012 revised Universities Canada fair dealing policy and Di Valentino (2013) found this same policy had been "adopted in some way" (p. 17) by many universities in her study. We suggest institutions sharing similar copyright policies are also likely to share broadly aligned copyright practices. A specific change in approach is reflected in the far greater prevalence of copyright-specific positions and offices in 2015. University libraries nevertheless maintain a lead role in the areas of copyright education, copyright use-focused policy, and permissions clearance, with copyright offices often having the distinction of being next most likely to hold the lead role.

Universities appear to be paying greater and more nuanced attention to copyright policy and copyright education from users' and creators' viewpoints. Given that fair dealing was by far the most frequently identified focus of institutional copyright policy and copyright education for users, it is apparent that provisions for user's rights in the Copyright Act have achieved a heightened prominence and importance on Canadian university campuses.

Despite substantive challenges that remain in the copyright realm, over the past several years Canadian universities have evidently augmented the attention and resources dedicated to ensuring their communities, on the one hand, understand and comply with Canadian copyright law, and on the other hand, are aware of and fully exercise the Copyright Act's provisions for user's rights such as fair dealing.

### **Acknowledgements**

This study was partially funded by a 2015 research grant from the Canadian Library Association. The authors thank Tony Horava for permission to adapt the survey instrument used in his 2008 study.

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