



Copyright Board
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Commission du droit
d'auteur du Canada

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COPYRIGHT BOARD OF CANADA

IN THE MATTER OF

The Access Copyright Post-Secondary
Educational Institution Tariff, 2024-2026

NOTICE OF GROUNDS FOR OBJECTION

OF

**COLLÈGE COMMUNAUTAIRE DU NOUVEAU-BRUNSWICK, NORTH ISLAND
COLLEGE, NORTHERN LIGHTS COLLEGE, and SASKATCHEWAN POLYTECHNIC
(the “COLLEGES”)**

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Introduction

This Notice of Grounds for Objection is submitted on behalf of the following four postsecondary institutions, all of whom are Objectors to the proposed *Access Copyright Post-Secondary Educational Institution Tariff, 2024-2026* (the “Proposed Tariff”): Collège Communautaire du Nouveau-Brunswick; Northern Lights College; North Island College; and Saskatchewan Polytechnic. This group of institutions is referred to as “the Colleges”.

The Colleges object to the Proposed Tariff in its entirety. Although the Colleges specifically note the following grounds, they reserve the right to raise additional grounds as the Board’s consideration of the Proposed Tariff progresses.

1. Any grounds for why the Board should not approve the proposed tariff despite any alteration of royalties or levies or fixation of terms or conditions

The Colleges dispute that Access Copyright possesses the necessary rights to authorize the communication to the public by telecommunication of the works in its repertoire. Further, the Colleges dispute that the making available of a work to students registered in a private course constitutes making the work available “to the public”.

2. Any grounds for objecting to any royalty or levy rates in the proposed tariff

The Colleges object to the proposed rate for educational institutions that are not universities, on the grounds that it does not represent the value of Access Copyright’s repertoire, and that the value of Access Copyright’s repertoire is in decline.

The Colleges also dispute that an inflation adjustment is necessary or appropriate, and, in the event that the Board finds that an inflation adjustment is required, the Colleges dispute the manner in which Access Copyright has calculated it.

3. Any grounds for objecting to any terms or conditions in the proposed tariff

The Colleges object to all terms and conditions in the Proposed Tariff that are different from those in the *Access Copyright Post-Secondary Educational Institution Tariff, 2015-2017* (the “Certified Tariff”).

In particular, the Colleges object to the reporting requirements outlined in section 7 of the Proposed Tariff, for the same reasons as those outlined in paragraph 342 of the Board’s Reasons certifying the *Access Copyright Post-Secondary Educational Institution Tariff, 2015-2017* (the “Board’s Reasons”). These proposed requirements are onerous, difficult to enforce, and unnecessary in light of the methods Access Copyright has historically used in distributing royalties.

There are also several proposed requirements that do not relate to Access Copyright’s rights, nor to the distribution of royalties. For example, the requirement in para. 7(1)(d) to provide the “number of authorized persons for the course of study” is redundant

considering that 7(1)(l) already requires institutions to provide the “total number of sets copied of each course collection”.

The Colleges also object to the proposed requirement in paragraph 4(1)(b) of the Proposed Tariff to provide written agreements with subcontractors. They dispute that the content of agreements with subcontractors is relevant to uses of works that institutions will make under the terms of the tariff. Further, the proposed requirement in paragraph 4(1)(b) of the Proposed Tariff that written agreements with subcontractors be provided within 30 days of entering into such agreements is onerous, and compliance with it may be impossible, because a general agreement could be made that does not specifically relate to the works in Access Copyright’s repertoire.

Additional Information

A person who files a Notice of Grounds for Objection, may, at the same time, i) propose alterations to the royalty rates and to the related terms and conditions; ii) propose new related terms and conditions; and iii) file additional information for the Board’s consideration of the proposed tariff. Each Notice of Grounds for Objection may be filed in the official language of the objector’s choice.

The Colleges propose that the following new related terms be added to the tariff.

Duration of licence and opting in and out

The Colleges propose that the tariff, once certified, include a term clarifying that the temporal duration of the licence that an institution obtains by opting into the tariff is a single academic year. Further, as noted at paragraph 358 of the Board’s Reasons, it is appropriate for the Board to explore wording that would clarify how an institution may opt in or out of purchasing a licence under Access Copyright’s tariff.

Preventing double payment by subcontractors

The Colleges are of the view that the system established in subsection 4(5) of the *Access Copyright Post-Secondary Educational Institution Tariff, 2015-2017* (the “Certified Tariff”) was adequate for ensuring that institutions and subcontractors were not paying Access Copyright twice for the same copying, and object to its deletion in the Proposed Tariff.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of January, 2023.

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