

PAYBACK NOW - PROSPECTS FOR ALL CANADIAN AUTHORS AND OTHER MATERIAL CREATORS.

By Peter Harries-Jones.

Canada is one of the countries which adopted a collective payment approach to royalty payments. In the past copyright legislation in Canada gave authors who were registered with the Public Lending Rights Commission a yearly payment, the Creator Repertoire payment, based the number of libraries which held copies of an author's books. The scheme covered authors working in both French and English. About five years ago, Quebec decided to go its own way and authors writing in English had to re-register under a new organization called Access Copyright, the registered name of The Canadian Copyright Licencing Agency

The move was a significant advantage for all registered authors, occurring just as copyright legislation underwent change to take into account massive amounts of photocopying as well as progressive shifting to digital printing and video formats. Access Copyright, unlike its predecessor, has become active over a range of issues seeking to improve collective royalty payment and benefits for creators of material. For example, it is currently opposing sections of a new bill, Bill C-32 which threaten to bring adverse change to copyright payments- specifically to creators of material for schools and textbook writers for school curricula.

Membership

Becoming an affiliate of Access Copyright is quite simple. Any Canadian or permanent resident who is an author, illustrator or photographer can register with Access Copyright if he or she meets the following requirements: at least one work has been published in print format (i.e.: book, magazine, newspaper or scholarly journal), he or she retains the copyright to at least one item and is not affiliated with another reproduction rights organization (RRO).

Once an affiliate you are entitled to receive collective royalty payments for your copyrighted material and remain an affiliate as long as you own the copyright to that work. Affiliation can also continue after an affiliate dies as literary estates (heirs and beneficiaries) are eligible to receive royalties if they complete a Warranty Regarding Entitlement Form asserting entitlement to royalties.

Payment Revenue

Access Copyright collects royalties from two sources: revenues from Canadian licences, and from revenues forwarded from foreign reproduction rights organizations (RROs), i.e. for Canadian works copied abroad. These royalties are then distributed through a variety of ways: either title-specific (royalties paid based on actual copying records), or modeling (royalties paid based on data that reasonably reflects copying) and repertoire. Fifteen percent of all available revenue for distribution is paid out to creator and publisher affiliates. If any of your own works for which you retain the copyright appear as copies for distribution, you will receive payment. For 2008 Access Copyright distributed just over \$30 million to copyright owners.

With regard to other reproduction rights organizations, currently, Access Copyright has reciprocal agreements with 28 countries. The RRO agreements have greatly expanded the

amount of works covered by an Access Copyright licence. Of the pool of money available 40% of the pool is distributed equally amongst all writers, and this is known as the 'base' payment and 60% is distributed to writers depending on how much you have contributed to the repertoire of works licensed by Access Copyright. Of course, the payment which rightholders receive through Access Copyright is taxable income, meaning that collectives such as Access Copyright keep track of these payments and all individual payments must be reported.

Supplementary Retroactive Paybacks

The two most significant moves of Access Copyright has made is first, to enlarge the scope of works eligible for payback, and second to make payback retroactive. The "how much you have contributed to the repertoire of works" is entirely new as of 2010. Until that time all registered authors received a 'base' payment regardless of the number of individual contributions. Further the 'base' payment was heavily oriented to copyright obtained from books in libraries and not to journal or newspaper articles.

Under the new rules beginning this year called Payback™, all eligible affiliates will receive a base payment and can also make a claim for a supplementary payment. The supplementary portion of Payback™ is based on the following factors: what you published, how much you published and when you published (between 1989 and 2008). Affiliates who joined Access Copyright on or before December 31, 2008 were eligible to make a claim for a supplementary payment for this year's Payback™ payment which will be distributed at the end of November 2010..

Affiliates who registered with Access Copyright in 2009 and 2010 will be eligible for Payback™ in 2011 and 2012 respectively. Eligible affiliates who did not make a Payback™ claim this year (2010) will be able to make a claim for a supplementary payment for next year's Payback™ payment in early 2011. The scheme will embrace 2011 affiliations as well. To make a claim requires an up to date curriculum vitae, which can then be transferred in summary (numbers) in the various categories requested. The deadline to make Payback™ claim in 2010 for the supplementary payment was May 31.

There is a reason for the cut-off for work published since 1989. The year chosen results from extensive review of statistical data and this showed that works published more than 20 years ago were less likely to have been copied under the licence provided to Access Copyright. Currently statistical data applied to payouts are based on the following criteria: (a) publication type - books, magazines, journals and newspapers - since different types of publications have different probabilities of becoming copied; (b) number of works; (c) number of pages - the more pages, the more likely to be copied; (d) and year of publication.

Initiatives and Benefits for Affiliates

In addition to providing basic and supplementary payouts, Access Copyright has promoted both initiatives and benefits for creators in other areas as well. The first of these is a Public Domain Registry. In 2006, Access Copyright announced a partnership with Creative Commons and the Wikimedia Foundation on the creation of a Canadian Public Domain Registry. Access

Copyright's role in this project has been to provide bibliographic information on Canadian published works contained in its Rights Management System (RMS). This list of over 300,000 works, including works that are currently in the Public Domain and those that will enter the Public Domain in the future, was provided to Creative Commons and the Wikimedia Foundation in September 2007.

Once further testing is complete, the registry will look similar to the online encyclopedia Wikipedia. It will be a globally searchable database of Canadian works, including those in the Public Domain. It will allow users to search and edit records in the registry to provide additional information about individual creators, the history of the registry's works and to add additional works to the system. The hope is that it will be a model for similar public domain registries around the globe.

The second initiative was a successful objection to the way in which Google decided to digitize - worldwide - books in print. In January, 2009, Access Copyright joined in with Class Action Settlement brought against Google by the Authors Guild, the Association of American Publishers, and individual authors and publishers. These lawsuits alleged that Google's scanning/digitization of books for its Google Book Search program infringed copyright. The Class Action was successful and Google agreed to additional payouts bringing some handsome cheques to individual authors, including many authors of academic books.

A third initiative is active objection to sections of Bill C-32 that refers to copyright of school materials K-12. In 2009, the Copyright Board of Canada certified a tariff to compensate creators and publishers for the photocopying of their works in K - 12 Schools. However, Ministers of Education of all the provinces and territories with the exception of Quebec, along with close to a hundred individual school boards, asked the Federal Court to review the Copyright Board of Canada certification.

The Federal Court found that the Copyright Board's decision was reasonable in light of the evidence before it. The Court heard that over 250-million pages of textbooks and other materials are copied for use in K-12 schools every year. The estimate before the Court of what is being photocopied by the primary, secondary and post-secondary education sector represented between 1.5 million and three million books a year, books 'that have not been sold.' The claim put forward was that to take compensation away on this scale is to jeopardize the Canadian publishing industry and individual creators that provide Canadian children and their teachers with Canadian content.

Subsequent to the Federal Court Review, the federal government has stepped in to propose changes to the Copyright Act that would alter compensation for this copying activity. The Bill does offer protections for digital content when it comes to printed materials used for education, but Bill C-32 alters the basic principle of copyright for all material by permitting some photocopying for free by the schools. As a result of lobbying by provincial ministers of education, the government has included "education" in the bill's "fair dealing" section of the bill, which allows free photocopying within certain limits.

Writers and publishers are worried that a broad interpretation of "education" could lead to

rampant copying of textbooks, instructional manuals and even novels. Would a school board be allowed to buy just one copy of a new textbook and copy it for all its students? Would universities be allowed to copy for free bits and pieces of 20 different books to compile reading material on a certain subject for their students? If so the current copyright charges on such course readers would disappear. Access Copyright, on behalf of publishers and writers want the definition of “education” to be circumscribed in the bill to avoid these and other potential abuses. The government position is that: “Extension of fair dealing to education will open the door for digital learning, enabling students in rural and remote communities to access the same lessons as those in metropolitan cities,”

The opposition Liberals and New Democrats have, as yet, shown no inclination to pick up the cudgel on behalf of publishers and writers. At time of writing, the Bill is still in Parliament.

Other Benefits: Personalized Copyright, Sponsorship Funds, health and insurance .

Three other ranges of benefit also come with affiliation to Access Copyright.

--Free to any creator of copyright protected material, iCopyright for ©reators offers personalized licensing and permissions services for content available on their personal website and/or in print. Creators interested in using this service can obtain a copyright tag from iCopyright and attach it to their works. The tag directs users to a webpage where they can instantly obtain a licence to use the work they want to copy and learn more about the creator.

Access Copyright maintains that “iCopyright for ©reators is a fully customizable user-friendly system that allows creators to set their own prices for use of their content, ensures protection of creators’ valued copyright and tracks what content is being used.”

--Access Copyright sponsors a wide range of events from across the country, including the Professional Writers Association of Canada’s Annual Conference and the annual Elora Writers Festival Competition. Any organization interested in applying for sponsorship funds is encouraged to email editor@accesscopyright.ca to receive a sponsorship form.

--Access Copyright is a member of the Writers' Coalition Program, which is a benefits plan specifically tailored to Canada's writing community. Under the program, Access Copyright affiliates can purchase affordable drug, health and dental protection in addition to separate home, studio, car and office insurance.