

Copyright Board
Canada



Commission du droit d'auteur
Canada

November 7, 2019

In accordance with section 68.2 of the *Copyright Act*, the Copyright Board hereby publishes the following proposed tariff:

- Access Copyright Provincial and Territorial Government Tariff, 2021-2025

By that same section, the Copyright Board hereby gives notice to any person affected by this proposed tariff that users or their representatives who wish to object to this proposed tariff may file written objections with the Board, at the address indicated below, no later than the 30th day after the day on which the Board published the proposed tariff under paragraph 68.2(a), that is no later than **December 9, 2019**.

Lara Taylor
Secretary General
Copyright Board Canada
56 Sparks Street, Suite 800
Ottawa, Ontario K1P 5A9
Telephone: 613-952-8624
Registry-greffe@cb-cda.gc.ca

PROPOSED TARIFF

Filed with the Copyright Board pursuant to subsection 67(1) of the *Copyright Act*

2019-10-15

THE CANADIAN COPYRIGHT LICENSING AGENCY (ACCESS COPYRIGHT)

Access Copyright Provincial and Territorial Government Tariff, 2021-2025

For the reproduction, communication to the public by telecommunication or making available to the public by telecommunication, or the authorization of any such act, in Canada, of works in Access Copyright's repertoire

2021-01-01 – 2025-12-31

Proposed citation:

Access Copyright Provincial and Territorial Government Tariff, 2021-2025

STATEMENT OF ROYALTIES TO BE COLLECTED BY THE CANADIAN COPYRIGHT LICENSING AGENCY (ACCESS COPYRIGHT)

For the reproduction, communication to the public by telecommunication or making available to the public by telecommunication in any material form or by any method or process whatsoever, or the authorization of any such act in Canada, in 2021 to 2025, of works in the repertoire of Access Copyright by employees of provincial and territorial governments.

1. Short title

This tariff may be cited as the *Access Copyright Provincial and Territorial Governments Tariff, 2021-2025*.

2. Definitions

In this tariff,

“*Copy and/or Communicate*” means any reproduction, communication to the public by telecommunication or making available to the public by telecommunication, in any form or by any method or process whatsoever, or authorizing any such act, including one that is made by, as a consequence of, or for the purpose of the following activities:

- (a) photocopying, printing, and xerography;
- (b) reproducing onto microform (including microfilm and microfiche);
- (c) reproducing by
 - a. typing or word-processing without adaptation,
 - b. hand transcription or drawing (including tracing) onto acetate or other media, and
 - c. duplicating from a stencil;
- (d) reproducing by a machine, device or computer that makes a Digital Copy, including scanning;
- (e) transmitting a Published Work by any means or process including by SMS (short message service), text, electronic mail or facsimile;
- (f) copying onto or storing on a storage device or medium, including onto a computer, USB (universal serial bus), tablet or other mobile device;
- (g) providing access to a Published Work including by posting, uploading, copying onto or storing on a Secure Network;
- (h) transmitting or downloading from a Secure Network and copying onto or storing on a storage device or medium, including onto a computer, USB, tablet or other mobile device;
- (i) projecting an image using a medium or device, including a computer, tablet or other mobile device; or
- (j) displaying on a medium or device, including a computer, tablet or other mobile device. (« *Copie ou communiquer* »)

“*Digital Copy*” means a reproduction of a Published Work in any digital form including on a medium or device, tangible or not, using information technologies be they electronic, magnetic, optical, wireless, or other, or a combination of technologies. (« *Copie numérique* »)

“*Employee*” means an employee of one of the Licensees, as determined in accordance with the applicable enactments, policies and bookkeeping practices of that Licensee. (« *Employé* »)

“*FTE*” means a full-time Employee or a part-time Employee whose combined ordinary working hours are counted in proportion to a full-time Employee’s ordinary working hours. (« *ETP* »)

“*Licensee*” means Her Majesty the Queen in Right of British Columbia, Her Majesty the Queen in Right of Alberta, Her Majesty the Queen in Right of Saskatchewan, Her Majesty the Queen in Right of Manitoba, Her Majesty the Queen in Right of Ontario, Her Majesty the Queen in Right of New Brunswick, Her Majesty the Queen in Right of Nova Scotia, Her Majesty the Queen in Right of Newfoundland and Labrador, Her Majesty the Queen in Right of Prince Edward Island, Her Majesty the Queen in Right of the Yukon Territory, Her Majesty the Queen in Right of the Northwest Territories and Her Majesty the Queen in Right of Nunavut. (« *Titulaire de licence* »)

“*Repertoire*” includes all Published Works by any author or publisher, estate of an author or publisher or other person with a copyright interest in a given Published Work who, by assignment, grant of licence or by appointment as an agent or otherwise, has authorized Access Copyright to collectively administer the reproduction right, the communication to the public by telecommunication or making available to the public by telecommunication right in and to that Published Work, and/or all Published Works authorized by another collective management organization. (« *Répertoire* »)

“*Secure Authentication*” means a process of authentication that, at the time of login, identifies each user, whether by user name and password or by some other equally secure method. (« *Authentification sécurisée* »)

“*Secure Network*” means an electronic network, Internet or other digital network, learning management system or cloud-based storage service that is operated by provincial and territorial governments, or for and subject to the control of provincial and territorial governments, and which is only accessible by employees of provincial and territorial governments authenticated by a user name and password or other equally secure method. (« *Réseau sécurisé* »)

“*Published Work*” means a literary, dramatic or artistic work protected by copyright in Canada, of which copies have been made available to the public. (« *Oeuvre publiée* »)

“*Year*” means a calendar year. (« *Année* »)

3. Application

Subject to sections 4 and 5 hereof, an FTE shall be permitted to Copy and/or Communicate Published Works in the Repertoire for the purpose of conducting business of the Licensee, including for purposes of delivery of government programs and services by means of activities such as, but not limited to professional, research, archival, communication and administrative activities of the Licensee, as follows:

- (a) Copy and/or Communicate up to ten per cent (10%), provided that such limit may be exceeded in respect of the following portions:
 - (i) an entire newspaper article or page,
 - (ii) a single short story, play, essay or article,
 - (iii) an entire single poem,

- (iv) an entire entry from an encyclopaedia, annotated bibliography, dictionary or similar reference work,
- (v) an entire reproduction of an artistic work (including drawings, paintings, prints, photographs and reproductions of works of sculpture, architectural works of art and works of artistic craftsmanship), and
- (vi) one chapter, provided it is no more than twenty per cent (20%) of a book.

(b) make a Copy to be used to project, display or interact with an image for presentation using, but not limited to, an overhead projector, LCD or plasma monitor, or interactive whiteboard.

(c) make a Copy to replace any damaged or missing pages in the Licensee's holdings. If the total number of replacement pages is more than twenty per cent (20%) of a Published Work in the Repertoire, then the Licensee shall make reasonable efforts to secure a new replacement of the Published Work within a reasonable period of time.

(d) subject to paragraph 3(a), distribute

- (i) Copies and/or Communications to FTEs,
- (ii) Copies, except for Digital Copies, to persons other than to FTEs, and
- (iii) Digital Copies to other Access Copyright licensees that have a licence covering the reproduction and distribution of Digital Copies.

4. *General Limitations*

(a) Copies and/or Communications may only be made from Published Works in the Repertoire that are lawfully obtained by the Licensee.

(b) There shall be no intentional cumulative Copying and/or Communicating from the same Published Work in the Repertoire beyond the limits set out in paragraph 3(a) hereof.

(c) Copies and/or Communications shall not be made of a Published Work in the Repertoire that contains a notice prohibiting reproduction under a licence from a collective society.

(d) Copies and/or Communications shall not be sold for an amount that exceeds the costs of making and distributing such Copies and/or Communications, including an allowance for the royalties payable under this tariff.

(e) Copies and/or Communications shall not be used in advertising products or services.

(f) Copies and/or Communications shall be faithful and accurate reproductions of the original Published Work in the Repertoire.

(g) Copies and/or Communications shall not be made or used in a manner that would infringe the moral rights of any author.

5. *Additional Limitations Regarding Digital Copies*

(a) Digital Copies shall not be placed on any computer or computer network on the publicly accessible Internet in such a way as to be made publicly available or accessible otherwise than by Secure Authentication.

(b) Digital Copies shall not be stored, or systematically indexed, with the intention or result of creating an electronic database of Published Works in the Repertoire.

(c) Except as provided under subparagraph 3(d)(iii), Digital Copies shall not be shared, emailed or otherwise distributed to any person other than an FTE.

6. *Attribution*

The Licensee shall notify all persons under its authority who are entitled to make Copies and/or Communications under this tariff that, where reasonable under the circumstances, Copies and/or Communications made and/or distributed shall include, on at least one page,

- (a) a credit to the author (including writer, artist, illustrator and photographer) and to the source; and
- (b) a notice stating, "Copied and/or Communicated under licence from Access Copyright."

7. *Royalties*

(a) The Licensee shall pay an annual royalty to Access Copyright, calculated by multiplying the royalty rate of CAD \$4.00 by the number of its FTEs.

(b) The annual royalty payable under this tariff is exclusive of any federal or provincial taxes.

8. *Reporting and Payment*

(a) No later than April 15 of each Year of this tariff, the Licensee shall provide to Access Copyright the number of its FTEs as of March 31 covered by this tariff.

(b) Access Copyright will invoice the Licensee by April 30 of each Year of this tariff and such invoice shall be payable within thirty (30) days of the issue date.

(c) The Licensee shall keep records of all Copies made for external distribution pursuant to subparagraphs 3(d)(ii) and (iii) in a form and manner prescribed by Access Copyright. The Licensee shall provide these external distribution records to Access Copyright within thirty (30) days of the end of each quarterly period.

9. *Interest*

Any amount not received by the due date shall bear interest from that date until the date the amount is received. Interest shall be calculated daily, at a rate equal to one per cent (1%) above the Bank of Canada Rate effective on the last day of the previous month (as published by the Bank of Canada). Interest shall not compound.

10. *Surveying*

As requested by Access Copyright, but not more than once, the Licensee shall co-operate with Access Copyright in measuring a sample of the Licensee's libraries' paper and digital holdings and circulation. Access Copyright will work with the Licensee to ensure compliance with

legislative and policy requirements concerning privacy, security and non-disclosure. Access Copyright will only collect this information for the purpose of distributing royalties.

11. Records and Audits

- (a) The Licensee shall keep and preserve, for a period of six years, records from which the royalties due to Access Copyright under this tariff can be readily ascertained.
- (b) No more than once per year, Access Copyright, or its representative, may audit these records on fifteen (15) days' written notice to the Licensee and during normal business hours.
- (c) Access Copyright shall, upon receipt, supply a copy of the report of the audit to the Licensee which was the subject of the audit.
- (d) If an audit discloses that royalties due pursuant to this tariff have been understated by more than ten per cent (10%), the Licensee shall pay the reasonable costs of the audit within thirty (30) days of the demand for such payment.
- (e) In the event that an audit reveals an overpayment, the Licensee may reduce the amount due on the next royalty payment by the amount of such overpayment.

12. Addresses for Notices and Payment

- (a) Notices to Access Copyright shall be sent to
Access Copyright
The Canadian Copyright Licensing Agency
69 Yonge Street
Toronto, Ontario
M5E 1K3
Telephone: 416-868-1620
Fax: 416-868-1621
Email: governmentariff@accesscopyright.ca

- (b) Notices to the Licensee shall be sent to the last address of which Access Copyright has been notified in writing.

13. Delivery of Notices and Payment

- (a) A notice may be delivered by hand, by postage paid mail, fax or email. Payments shall be delivered by hand, by postage paid mail or by electronic bank transfer.
- (b) A notice or payment mailed in Canada shall be presumed to have been received three business days after the day it was mailed.
- (c) A notice sent by fax or email shall be presumed to have been received on the first business day following the day it is transmitted.

14. Transitional Provision: Interest Accrued before the Publication of the Tariff

Any amount payable before [insert date of publication of the tariff] shall be due [insert date immediately following the publication of the tariff] and shall be increased by using the multiplying factor (based on the Bank Rate) set out in the following table [insert table with applicable Bank Rate].