

Copyright Board
Canada



Commission du droit d'auteur
Canada

FACT SHEET

Access Copyright Tariff – Provincial and Territorial Governments

May 22, 2015

1. What is the Copyright Board of Canada?

The Copyright Board of Canada is an independent, quasi-judicial tribunal created under the *Copyright Act* to establish the royalties to be paid for the use of works or other subject-matter protected by copyright, when the administration of these rights is entrusted to a collective society.

2. What is Access Copyright?

Access Copyright is a collective society that administers the reproduction right in published literary works for all of Canada, except Quebec, where it is administered by Copibec.

3. To whom does the tariff apply?

The tariff applies to all provincial and territorial governments, except the Government of Quebec.

4. What are the activities covered by the tariff?

The tariff permits employees of provincial and territorial governments to make copies of published literary works, such as books, newspapers, journals and magazines, within the limits set out in the tariff.

The tariff does not permit the making of digital copies.

5. Which period does the tariff cover?

The certified tariff covers the period from 2005 to 2014. However, the tariff continues to apply on an interim basis until the Board certifies a new tariff for the subsequent years.

6. What are the royalty rates of the tariff?

The rates certified by the Board are 11.56¢, per employee, per year, for the period 2005-2009 and 49.71¢, per employee, per year, for the period 2010-2014.

7. What were the royalty rates based on?

The parties to the tariff proceeding conducted a study that sampled the amount and characteristics of copying done in 2010 by employees of the provincial and territorial governments that were party to the proceeding. This study was the main source of information used to establish the royalty rates.

8. What is the total amount of royalties that the tariff will generate?

The amounts of royalties that are likely to be generated by the tariff the Board is certifying are \$14,000 per year for the 2005-2009 period and \$60,000 per year for 2010-2014. These amounts do not account for the Governments of Ontario and the Northwest Territories who withdrew from the proceeding.

9. What were the rates proposed by the parties in the proceeding?

Access initially proposed rates of \$15 and \$24 per employee for the periods 2005-2009 and 2010-2014, respectively. Access later reduced these proposed rates to \$5.56 and \$8.45, respectively.

The governments who participated in the process proposed a rate of between 1¢ and 22¢ per employee for the 2005-2009 period and between 7¢ and 73¢ for the 2010-2014 period.

10. What was the process leading to the certification of the tariff?

On March 2004 and 2009, Access proposed its tariffs for the periods 2005 to 2009 and 2010 to 2014, respectively. The Board later consolidated the examination of both tariffs.

The governments participating in the proceeding initially challenged their liability by claiming Crown immunity. The Board rejected this claim on January 5, 2012. This decision was subsequently upheld on review by the Federal Court of Appeal on April 3, 2013.

The hearing on the tariff started on October 23, 2012, and lasted eight days. As part of their written testimony, the parties filed witness statements, legal arguments, and reports of their expert witnesses. Following the hearing, the Board issued several notices in which it sought further information and analysis from the parties, to enable the Board to determine a fair and equitable tariff. The last of the responses to these notices was received by August 28, 2014, when the file was finally completed.

11. Why does the tariff apply retroactively?

Access' ability to collect royalties retroactively stems from the law. Access is entitled by the *Copyright Act* to collect royalties set in a tariff from the date on which the tariff takes effect. That date is determined by the time at which the proposed tariff is filed, not by when the final tariff is certified. Access is required to file a proposed tariff by March 31 of the year before it takes effect. Since Access filed its first proposed tariff on March 31, 2004, it is therefore entitled to collect royalties starting in 2005.

Note: The Certified Tariff, along with the Reasons and a News Release can be found on the Board's Website under "What's New – Recent Decisions" at: <http://www.cb-cda.gc.ca/home-accueil-e.html>.