



# An Exercise in Contradiction? The Role of Academic Copyright Librarians

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## Introduction

Copyright is a set of limited rights established by law. This law is built on the premise that a balance between the rights of creators and the uses of works for the public good is achievable and worthwhile. However, implementing mechanisms to achieve that balance is imagined differently by different stakeholders. On university and college campuses, academic librarians often find themselves at the pressure points between control and creativity. This can be especially acute for copyright librarians whose practice is informed by personal, professional, and institutional value systems—systems that do not always align with each other or evolving case law and legislation. Indeed, agreement between all three points of view is rare.

Copyright librarians are uniquely positioned to observe first-hand how copyright law is applied, ignored, or abused in practice. They also educate and provide services both to users and creators of copyrighted works and are actively involved in the acquisition of copyrighted content. Copyright librarians are well-positioned to raise awareness of copyright alterna-

tives and exceptions, including open educational resources (OER), open access, Creative Commons licenses, and applications of fair dealing/fair use. They have the professional education to think critically about multiple viewpoints on the copyright spectrum and are positioned to testify to the shortcomings and strengths of existing copyright laws and policies. As such, they have a role to play in advocating for copyright reform at institutional, professional, national, and international levels for both users and creators.

This chapter combines existing literature on copyright librarianship with the observations of librarians specializing in copyright at two Canadian universities. It begins by contrasting the evolution of copyright legislation with the values of librarianship, followed by a recent history of copyright librarianship in North America, including an examination of roles and associated risk tolerance and the librarian/officer division of labor observed in Canada. Finally, it explores points of tension and provides academic copyright librarians with suggestions for navigating their professional environments and finding a voice in the evolving ecosystem of information management and intellectual property rights.

## **An Uneasy Coexistence: Copyright Legislation and the Values of Librarianship**

Copyright legislation often responds to technological developments by either reinforcing rights perceived to be under threat or decriminalizing practices that are unenforceable. Attempts to reform the regime to reflect such changes will unavoidably place creators, users, and rights holders at odds. These conflicting interests are difficult to balance. Just like the printing press and commercial bookselling industry eventually prompted the adoption of the Statute of Anne in 1710 by the Parliament of Great Britain,<sup>1</sup> the pressures of the digital age, with its technologies making reproduction and transmission of works easier, have led to significant amendments to copyright laws in North America.

In his overview of copyright's evolution in Canada and the United States, Guindon observed that the notions of public good and balance that were at one point central to copyright law have eroded as rights holders have

continued to emphasize the “property” aspect of original creations by demanding extensions of copyright duration and scope, often to the detriment of availability, accessibility, and usability.<sup>2</sup> As much as the Copyright Act of 1976 codified the doctrine of fair use in the US and was thus a significant development in users’ rights, the extension of the copyright term to life plus seventy years in 1998 swung the pendulum back to rights holders, and not just in that country. US legislation is increasingly considered the standard in the global and digital environment and is pushed for in international trade agreements, even though the Berne Convention only requires a term of at least fifty years after the death of the author (the current term in Canada). As Guindon argues, such term extensions “no longer [serve] primarily as an incentive to creativity. Rather [they are] a trade instrument, a tool for content-owning corporations to insure [sic] maximum profits over a long period.”<sup>3</sup>

Indeed, as large multinational companies—many of them based in the United States—have increasingly become rights holders of copyrighted works, terms have been extended, often through lobbying efforts. Disney’s emphatic support for the Sonny Bono Copyright Term Extension Act of 1998 (nicknamed the “Mickey Mouse Protection Act”) is one such example.<sup>4</sup> Extending or reinstating copyright protections reduces access to resources that could otherwise be used freely to create new works and share knowledge. One instance of such a reduction in access is the digitization of analog public domain works by for-profit providers that then charge for access to the digital versions. This model creates a barrier between users and works that should be part of the public domain, even though the value added by the provider has nothing to do with the substantial transformation of the work itself.<sup>5</sup> By applying a software licensing model to digital information, content providers are curtailing long-term access to content in a way that copyright legislation does not. In return for this temporary access, libraries are expected to monitor use and enforce the terms of the license, a burden that is not required with print collections. This can test the limits of professional duty as it entails a redefinition of the legal relationship between an educational institution, its library, and its students.<sup>6</sup>

Meanwhile, the dominant discourse in modern librarianship is fueled by democratic values that privilege access and openness in connecting people with published works, which is closely associated with the “public good” purpose of copyright law.<sup>7</sup> These values contrast with the tradi-

tional gatekeeper role of librarians that was arguably more in line with publisher demands for a more enclosed copyright regime. Statutory limitations around usage and reproduction create a certain level of economic viability for the rights holder. Historically, in libraries this protectionism was visible in the stewardship of rare and expensive works, whereby some level of patron access was permitted but the artifact itself was protected. The enclosure mechanism was physical but the resulting protection of works similar in that use of the work was restricted to those privileged enough to have a means of access. This librarian as protector role remains relevant with rare books and archival materials today,<sup>8</sup> but under the electronic subscription model, most librarians have largely allowed digital rights holders to become the gatekeepers of digital content through license agreements and authentication. The evolution of this protectionist approach can be observed in conservative decision-making, policies, and practices regarding copyright in universities and colleges. While this is in line with the information society discourse and its commodification of knowledge, it is in sharp contrast with discourses in other academic circles, namely innovation and serving the greater good.<sup>9</sup>

Academic institutions can be non-judicial places of contestation for copyright issues and their attendant tensions. This is especially true when new technologies test the limits of copyright law while simultaneously advancing specific user provisions. Institutional fair use or fair dealing practices that do not take advantage of relatively liberal user rights affirmed by court decisions is one example. In her comparison of institutional fair dealing policies in Canadian universities with the Supreme Court of Canada's decisions and the application of fair use in the United States, Di Valentino demonstrates that the post-secondary education sector in Canada is more conservative than it needs to be in its application of fair dealing. By defining a "fair amount" as ten percent or less of an entire work, educational institutions that engage primarily in this type of arithmetical analysis tend to overlook the specific facts of a "dealing" and the holistic approach outlined by the Supreme Court of Canada. Such a "course of action essentially disregards fair dealing or gives the impression that it is a last resort rather than a user's right."<sup>10</sup> This overly cautious interpretation of copyright law means that other rights are also underused.<sup>11</sup> For example, hesitancy to rely on exceptions created for libraries, archives, and museums can unduly restrict access

to format-shifted media. While streaming technologies are available and can be limited to serving educational purposes, most libraries will opt to provide access to migrated digital media locally instead of taking advantage of new platforms and applications, disadvantaging users and undermining the role of the library.

Copyright librarians, whose work is informed by the values of librarianship, the needs of content users and creators, and case law, can find more risk-tolerant approaches to be at odds with a risk-averse institutional position that relies on restrictive agreements with content providers, blanket licenses with a copyright collective society, and/or conservative interpretations of fair dealing/fair use. These competing pressures can have a chilling effect on all librarians, most of whom already perceive copyright as overly complicated with legal jargon and contradictory, rapidly evolving case law. Many librarians and other library staff are worried about providing inaccurate or outdated information or being held liable for the actions of library users. Thus, they may refer queries to specialists without attempting to respond.<sup>12</sup> This perception of copyright as something so complex that it can only be mastered by a few specialists undermines the education and outreach efforts of copyright librarians.<sup>13</sup> It presents copyright as specialized knowledge of limited use outside the classroom when in reality copyright literacy is a valuable life skill for everyone.<sup>14</sup>

Librarianship and copyright practices are under pressure from commercial interests and have arguably evolved in opposite directions, the former tending toward openness and embracing technological change and the latter becoming increasingly protectionist in response to changing technologies. This tension is at the crux of the copyright librarian's contradictory roles in what is still considered a new area of librarianship.

## A Recent History of Academic Copyright Librarianship in North America

The overlap between library services and copyright is significant and longstanding and is demonstrated in the Canadian Copyright Act provisions dedicated to libraries (e.g., sections 30.1-30.3, added in 1997 as part of a second phase of copyright reform) and US provisions of the

Copyright Act of 1976 (e.g., most notably via Section 108's so-called "library provisions"). While the vast majority of library resources are now available electronically and reproduction and sharing no longer take place primarily inside library walls, librarians continue to fulfill the role of copyright advisor on university and college campuses. The digital age and its associated licensing models demonstrate the need for copyright-literate librarians who are aware of the implications of electronic content acquisition and access and are also able to educate the academic community rather than simply enforce copyright compliance.<sup>15</sup>

While in-house legal counsel or external lawyers are often still managing risk at the institutional level, day-to-day copyright management has increasingly been handled by librarians or other copyright specialists with a library background.<sup>16</sup> For faculty and staff, however, "librarians have always been the de facto copyright advisors"<sup>17</sup> because legal counsel has been largely unavailable for routine copyright queries. What has changed is the complexity of managing copyright compliance in the digital age, the effort to educate university communities about copyright, and the visibility of librarians in such roles.<sup>18</sup>

Copyright librarianship is still an emerging subspecialty of the profession with dedicated copyright librarians found mainly at larger institutions. Copyright officers appeared first, at least as early as the mid-1980s in the US,<sup>19</sup> but between 2006 and 2013, just over 6 percent of library-related postings on the ALA JobLIST (covering the United States and Canada) mentioning copyright as an area of expertise had "copyright" in the job title. Throughout this period, there was an increase in the number of positions requiring knowledge of copyright and licensing.<sup>20</sup> In May 2017, there were thirteen librarians in 215 Canadian universities and colleges who had both "copyright" and "librarian" in their job title.\*

More broadly, the number of copyright specialists is increasing: there were only four copyright positions identified in Canadian universities in 2008, but by 2015, that number had reached twenty-seven—a 575 percent increase over eight years.<sup>21</sup> More often, the copyright function is under

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\* Nine universities out of 94 (9.6 percent) and four colleges out of 121 (3.3 percent). As of May 29, 2017, based on the library staff directories of member institutions of Universities Canada (<https://www.univcan.ca/universities/member-universities/>) and Colleges and Institutes Canada (<https://www.collegesinstitutes.ca/our-members/member-directory/>).

the purview of the library and these types of questions are handled by a copyright officer/advisor/specialist or are added to the portfolio of a librarian specializing in scholarly communication or licensing, a subject librarian or a library technician.<sup>22</sup>

In the Canadian context, the catalyst for this increase in the number of academic copyright librarians (or at least in-house copyright specialists beyond a clearance officer administering a blanket license) is attributed in large part to a combination of Access Copyright's 1,300 percent tariff increase for its educational license for universities in 2010 (justified by the digital shift in the production and reproduction of copyrighted works),<sup>23</sup> multiple Supreme Court of Canada decisions related to fair dealing as a user right, Copyright Act amendments (both in 2012), and a general shift toward a reliance on library-licensed e-resources.<sup>24</sup> Reflecting those recent developments, almost half of respondents in Patterson's survey of copyright specialists in Canadian universities had less than five years of experience in the role, and three-quarters of respondents' institutions placed copyright management within the purview of the library.<sup>25</sup>

At the same time, the use of digital works and associated practices became more commonplace in libraries. Open access publishing, the use of Creative Commons licenses, and online course delivery increased the need for more specialized copyright expertise in academic institutions, creating demand beyond the support that could be offered by legal counsel. The increasing demand for copyright support in libraries seems to suggest "a sensitivity to academic freedom and the advancement of knowledge" on the part of academic authorities and an implicit recognition that librarians have something to contribute to a fair and balanced application of copyright.<sup>26</sup> Copyright librarians appreciate university culture in addition to the law and its practical applications.<sup>27</sup>

### *Expectations and Contradictions: From Compliance Officer to Activist*

In her 2016 book, Frederiksen defined the copyright librarian as "someone who can serve as an intermediary between information producers and consumers; someone who is knowledgeable about the law and pro-

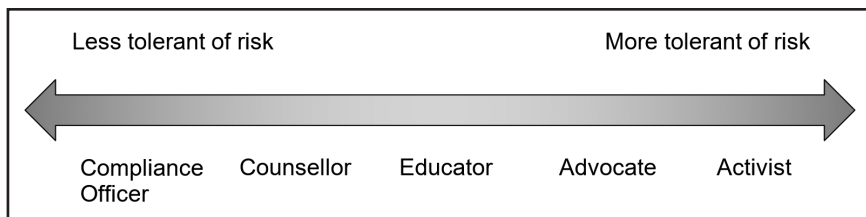
viding access to information; someone who is well positioned within an organization to answer questions about copyright and provide accurate, relevant, and timely answers, as well as assistance and guidance when needed.”<sup>28</sup> What distinguishes a copyright librarian from other copyright specialists is the emphasis on guidance and education. While they may be involved in copyright clearance activities, requiring a copyright librarian to play the role of “copyright police” is an underutilization of a librarian’s skills and an unduly restrictive interpretation of their role.<sup>29</sup>

Like librarians working in law, copyright librarians are expected to provide relevant information but not legal opinions. Thus, librarians need to stay on top of changes in legislation and policy and engage in some form of risk assessment.<sup>30</sup> While there is clearly a big difference between providing legal advice and sharing knowledge based on the assessment of a situation, the expectation of strict neutrality when sharing information is also challenged in the library and information studies literature.<sup>31</sup> That is, all information is produced and framed by a range of socio-political factors. Librarians are trained to understand and think critically about these factors in their role as information literacy specialists, including their own biases about copyright. As with all professionals, their own experiences will influence their work, and librarians who are also actively creating cultural works (e.g., writers, musicians, artists) may be more understanding of the protective role of copyright compared to colleagues who are less active in this type of output.<sup>32</sup>

In general, academic institutions provide copyright services to reduce the risk of legal action, usually through compliance or educational programs or a combination of both. How these services are structured is a reflection of institutional culture and strategy. In addition, personal attributes and formal job descriptions can determine where these positions land on a continuum between “compliance officer” and “activist.” Where a librarian, officer, or lawyer sees themselves on this risk-tolerance continuum can deeply influence their approach to the work.

As illustrated in figure 5.1, compliance officers are associated with the least risk tolerant, or most conservative, position on the continuum. The primary objective of this type of role is to comply with narrow interpretations of legislation, as reflected in auditing, oversight, or clearance responsibilities focused on preventing infringement instead of explaining





**Figure 5.1.** Risk tolerance continuum and associated roles for copyright specialists.

the reasons uses might be problematic for rights holders. It is an approach that generally lacks flexibility and is informed by a limited understanding of the complexities of copyright legislation and jurisprudence. A copyright office following this approach will likely adopt procedures for its user community that include specified allowable actions and consequences for deviation. At an individual level, some librarians may engage in the “copyright police” mindset, but these types of clearance or compliance responsibilities are more often completed by other staff members.

Institutions that are clearly uncomfortable with even a minimal level of risk may be more inclined to subscribe to a blanket license from a copyright collective society.\* This approach to copyright education and outreach is often limited to informing the community of what is allowed under the license and is sometimes based on the presumption that copyright is too complex to be understood and applied by the average person. A university adopting this approach may indeed minimize risk by limiting reproduction to a range of activities under specific conditions, but it can also discourage a more nuanced understanding and flexible interpretation of copyright law in its current state and in future iterations.

Officers and librarians with a deeper understanding of copyright law who can work with a slightly higher level of risk (e.g., where not all copyright-related activities are systematically audited) will tend to engage in

\* It is important to note, however, that factors other than a low risk tolerance also come into play when an organization adopts a blanket license approach. For example, the size of the user population is often central to such a decision. When the price of a license issued by a copyright collective is based on the number of full-time equivalents (FTE) within an organization, it can make financial sense for an academic institution of more than 40,000 students, faculty, and staff to create two or three positions to manage copyright internally rather than pay more than \$1 million in fees every year. However, a much smaller institution with a community of fewer than 5,000 people may not be able to justify the creation of a complete copyright apparatus when purchasing an annual license would amount to \$150,000.

one-on-one consultations to counsel creators, users, rights holders, and administrators about specific scenarios. Their (non-legal) advice about an appropriate course of action can still be overly cautious, risk-averse, and informed by strict standards of compliance, steering clear of actions that could be interpreted as advocacy.<sup>33</sup> These individual counseling opportunities can be informed by education and outreach efforts on campus.

Getting closer to the center of the continuum are librarians for whom copyright literacy is their main responsibility, which includes a strong focus on education and outreach. Morrison and Secker observed that UK information professionals engaging in copyright education “find their knowledge about copyright...empowering and the user makes the ultimate decision about how to act, but from an informed perspective.”<sup>34</sup> Copyright librarians at the midpoint of the continuum already possess information literacy skills and engage in copyright literacy as a logical extension to educating their campus communities about how to ethically gather and use information.<sup>35</sup> They are also less likely to be called upon only when a situation needs to be “fixed” or when someone is seeking “approval” for a particular approach, although they may still emphasize compliance in their teaching.<sup>36</sup> Institutions where a copyright librarian’s focus is education and outreach may be more likely to adopt guidelines to offer their user community tools that encourage autonomy rather than strict policies. However, these librarians must have advanced knowledge and professional confidence. This kind of outreach also requires librarians to discuss the political, economic, and cultural ramifications of copyright law and “to articulate the intricate web of interests that exists between information creators, producers, aggregators, intermediaries, and consumers.”<sup>37</sup>

Educating faculty, students, and staff about copyright can also inform and inspire advocacy work. Librarians often describe themselves as service-oriented but also change-focused.<sup>38</sup> It is a self-identity that serves copyright librarians well as they discover imbalances in the application of copyright law at their institution or in the law itself. Librarians have the skills to connect people with the resources they need, a practice that provides ample evidence for public domain advocacy, as well as making arguments to protect the rights of both creators and users. Being an advocate can include promoting fair dealing/fair use as a right (not just a defense

or a privilege) or developing programming around the use of Creative Commons licenses and the development of OER. For some, advocacy work could include encouraging their user community to be less dependent on third-party copyrighted content by relying more on hyperlinking and open access content, for example.

Finally, at the more progressive end of the continuum are activists who agitate for change and take their efforts beyond their institution and the academic sector. Activists may, for example, challenge the need for an exclusive property right to incentivize the creation of new works. They might push for copyright reform and intervene in the legislative process through letter-writing campaigns, petitions, and participation in public consultations. They may also join forces with groups with similar concerns, or write on the topic for a wider audience.

The roles on this risk tolerance continuum are not mutually exclusive and, in some cases, may reflect the evolution of the responsibilities assigned to or taken on by copyright librarians in the course of their careers. They can also help librarians reflect on how their beliefs and practices change over time, especially as they learn more about copyright law and practice.

### *Copyright Librarians and Copyright Officers: How Are They Different?*

Copyright officers and librarians often work side by side in larger academic institutions and can share basic tasks. However, it is important to recognize and communicate the differences between the two positions, as the institutional understanding of these roles can frame the profile and effectiveness of the service. While official titles do not always accurately reflect individuals' copyright responsibilities, there are two subgroups of recognizable copyright specialists who appear to face different realities despite some overlap in their roles and potentially their training.<sup>39</sup> In her 2016 study, Patterson noted that in the Canadian context “copyright officer” was the most common title for non-librarian academic copyright staff but that there was a sense of dissatisfaction with the label because of the “policing and punitive connotations of the word ‘officer,’” which can add to the discomfort of individuals who already feel intimidated by copyright.<sup>40</sup> An “officer” is more likely to appear as the authority on the

matter, with the power to deny permission or initiate action on an infringement claim. In risk-averse institutions, this can give officers higher standing and respect than their librarian counterparts.

The role of librarians may be viewed in a more positive light in the academic community than that of copyright officers, even if the specifics of the librarian's role are not universal or agreed upon, including by those in the profession itself. While some librarians maintain a gatekeeper persona, most academic librarians today are associated with service, education, and access to information. Thus, copyright librarians can be perceived as more approachable than officers and are more likely to be known around campus from the educational programming they offer to faculty and students. In 2007, Vesely observed that librarians possess the “skills...to get to the question behind the question, locate a copyright owner, or find high-quality but less expensive alternatives to copyright-protected works,” and to interact with administrators, faculty, students, and staff while adhering to “a tradition of intellectual freedom combined with an ethical use of information, balancing respect for owner's rights and promotion of user's rights.”<sup>41</sup> A decade later, Frederiksen made a similar observation: What makes a good reference or research librarian is also what makes a good copyright specialist.<sup>42</sup> As Frankosky and Blair put it, “The legal aspect of copyright is paramount, but if no one approaches to ask for advice, you're working in a vacuum. It's the training, guidance, and awareness aspects of the role that make it come alive. These are the skills and knowledge that the librarian brings to the position, not the attorney.”<sup>43</sup>

Both officers and librarians can manage permissions services and related staff, answer questions about copyright, often provide training sessions, and help shape institutional policy and procedures. Librarians are usually also expected to make these contributions as members of the academy and in ways that are informed by their academic work in library and information studies. Similarly, librarians answer questions but are also trained to actively engage users through a reflective reference interaction. Their training sessions can become critical copyright literacy sessions, a responsibility and a privilege not normally available to copyright officers. Copyright librarians are expected to embody the values of their larger profession—librarianship—and they do so through their public service responsibilities, conference presentations, research papers, and advocacy work.

## Navigating the Tensions

Copyright librarians working in academic libraries provide services and expertise that fill a need: to educate the campus community about the rights and limits associated with copyright law. They wear many different hats and may, at different times, consider themselves to be counselors, educators, advocates, and sometimes even activists. In many institutions, copyright librarians can face tensions when working in an environment lacking in sufficient administrative and collegial support. This tension could result from the recent evolution of the role of the copyright librarian from a part-time or side position to a full-time specialist or the reluctance of others to view copyright literacy programming as an important complement to other services. For example, subject librarians that are willing to integrate academic integrity or research data discussions (or other facets of the scholarly communication ecosystem) into their information literacy sessions may hesitate to include even basic information about copyright, either because they do not feel knowledgeable enough in the subject or they fear that adding such content will confuse students and faculty. Similarly, administrators may be hesitant to accept any suggestions (from copyright librarians and support staff alike) without input from legal counsel. The typical role of legal counsel, however, is to minimize the institution's exposure to legal risk, not to ensure that the mandate of the university is realized. Their proclivity to avoid manageable levels of copyright risk can prevent libraries from realizing their mission. This situation, known as mission risk, can result in loss of collections (e.g., through degradation without reproduction) and reduced access to materials (e.g., not making preservation copies of at-risk materials).

Finding a space within an organization to recommend, teach, persuade, and create change will look different in different environments. The roles of counselor, educator, advocate, and activist are interdependent and dynamic. Despite the relative ease of mapping these on a continuum, in practice, they are far from linear. For this reason, this section organized by type of service offers ways to navigate these tensions.

### *Literacy Programs and Services*

Copyright literacy shares its precepts with information literacy, which

includes “an understanding of how to use and share information and the ethical implications of doing so.”<sup>44</sup> More specifically, ACRL’s *Framework for Information Literacy for Higher Education* refers to information “as a commodity, as a means of education, as a means to influence, and as a means of negotiating and understanding the world,” as something with value.<sup>45</sup> The production and dissemination of information cannot be divorced from the larger legal and socioeconomic context. At a minimum, information-literate individuals will recognize that even “free” information should be attributed to its authors. At a more advanced level, they will be aware of their rights and responsibilities as creators and users of information, while experts will understand that because information has value, it has the power to effect change but also to marginalize.<sup>46</sup>

Many copyright librarians offer copyright literacy sessions to help students, faculty, and colleagues understand copyright issues. This includes identifying these issues and related policies as well as critically evaluating current practices and policies. For example, instead of simply presenting an institutional copyright policy (e.g., fair dealing/fair use guidelines with a copying ceiling of 10 percent of a work), a librarian using a critical lens might compare the policy with those at other institutions or evaluate its interpretation of existing law (e.g., no hard percentages in fair dealing provisions, case law that allows for copying an entire work in some cases).

Copyright literacy programs can and should include curriculum integration where possible. This helps build librarian-faculty relationships that can evolve into making the classroom a space for both discovery and empowerment. Asking art students, for example, to consider how they constructed one of their own pieces and how they would like others to use that work can lead to useful discussions about ownership and licensing. Conversations about case law and legislation can inspire students and faculty to become more involved in legislative reviews and academic legal conferences. Sharing academic writing about copyright can also be useful. For example, asking graduate students to unpack Guindon’s quote, “The recent evolution of copyright is biased in favour of rights-holders at the expense of the public domain and the common good”<sup>47</sup> can help expand copyright awareness. One does not have to be a legal expert to have a useful conversation about copyright. After all, librarians are trained to help learners discover and develop knowledge on their own, not to tell faculty and students how they are supposed to feel about or interpret copyright law.

## *The Praxis of Scholarly Communication*

Copyright librarians are uniquely positioned to guide academics through copyright issues inherent in the practice of scholarly communication. Workshops for faculty and graduate students focused on author rights and publisher agreements can increase awareness about statutory rights and help academics make informed publishing decisions. For example, comparing corporate profit figures with author remuneration realities can inspire a conversation about alternate publishing strategies, including requests for rights retention clauses in publishing agreements.

Other areas in the scholarly communication ecosystem that are ripe for copyright conversations, especially for policy work at the institutional level, include open access publishing, the shift to open educational pedagogy, and the development of OER. It is difficult, if not impossible, for any of these platforms to function effectively with an “all rights reserved” approach to copyright. However, academics may not understand the breadth of their rights under their employment contract and, if they retain their copyright, the power of open licensing and how and when to use it to expand the access, visibility, and impact of their work.

The opportunities for working across campus and at the association level on open education and open access projects continue to unfold. Where and how copyright librarians contribute to these efforts will be a function of institutional culture and professional confidence. On many campuses, these initiatives are at early stages or low penetration levels, but it is clear that funder mandates and the ubiquity of digital access are trends that are likely to strengthen. This presents an opportunity for advocacy work that could inform policy and change practices.

## *Policy Interventions*

The inclusion of librarians in policy decision-making processes varies by institution and association. The more risk-averse these organizations are, the less likely they will be to listen to relatively progressive voices that bring evidence about changing practices. For example, based on the fairly

widespread acceptance of relatively conservative fair dealing guidelines, conservatism appears strong on many Canadian university campuses. Building an evidence-based platform for incremental change is one way to work within these scenarios.

Public service librarians with copyright training are uniquely positioned to gather evidence about how creative works are used and created. Stories gleaned from classroom and para-classroom conversations, focus groups, and consultations should be used to inform policy. For example, if librarians recognize that most students are accessing course readings via licensed library services and not their print collections, then related copyright policies should be amended to identify this established practice. In Canada, this shift in use was one of the factors that influenced the widespread abandonment of the Access Copyright (collective society) blanket license. If this evidence had been ignored and blanket licensing agreements maintained (despite steep increases in cost), the dismissal of evidence from the classroom would have been very costly.

Liaison librarians also have opportunities to observe changes in instructional practices. For example, the removal of VCRs and DVD drives from classrooms can lead professors to find online versions of dubious origin instead of asking the library to obtain versions of the films that are available for streaming. Developing supportive practices can help prevent unintentional infringement scenarios. Policies that are not based on current expectations and practices can become outdated and irrelevant, making adherence less likely. For these reasons, policy-making bodies should receive and respond to input from people who actually work with the subject of the policy. In the academic copyright context, this means people who can directly observe and report back on how end users (authors, students, and faculty) are using creative works.

### *Contributing to Legislation and Case Law*

Institutional and association copyright policies and positions are necessarily informed by legislation and case law. It is easy to forget that these systems were designed to be interactive and ultimately support democratic practices. Copyright librarians have opportunities to contribute to legislative reviews, ideally through institutional submissions, but also



by working with their professional associations and by making personal statements via public consultations. This work can take many forms, including in-person attendance at government-sponsored and advocacy groups' town halls and roundtables, writing opinion pieces for respected news providers, writing articles for academic and association periodicals, presenting at conferences, and encouraging colleagues to do the same. This type of professional work can encourage and support conversations and contributions beyond home institutions and affect change.

Amicus briefs and similar interventions into ongoing court cases present a higher threshold for involvement, to be sure, but are opportunities for input into the democratic process, especially at a group or association level. Recently, a group of US librarians and copyright experts submitted a letter to counter the proposal to move the Copyright Office to the legislative branch and remove the nomination of the next Register of Copyrights from the hands of the Librarian of Congress.<sup>48</sup> The US-based Library Copyright Alliance works with library associations to inform their amicus briefs, letters, and reviews of proposed legislative changes. While Canada does not have an equivalent umbrella organization for copyright advocacy, its library associations and allied organizations have provided submissions to Copyright Board and court proceedings on related issues.

All the activities noted in this section are informed by a librarian's employment status. Holding tenure and being able to rely on the protections offered by strong academic freedom provisions can make this work easier and, in some cases, possible. Librarians' professional responsibilities include preserving and strengthening their voices at work and in their broader communities.

## Conclusion

Copyright librarianship and its practices are shaped by legislative reforms and case law and also by the divergent and changing priorities of a wide range of stakeholders. Navigating the underlying tensions requires a commitment to fair observation and equitable solutions. Librarians have specialized knowledge in a challenging and dynamic area of study: copyright. They can support the development of new creative works and are invested in the dissemination of those works for the public good. Copyright law

provides the legal framework that informs librarians' roles in one area of this information ecosystem, but how librarians share and reuse creative works, both personally and professionally, is informed by their past experiences, value systems, and socio-political understanding of place. Workplace interpretations of copyright will vary, as they are informed by institutional risk tolerance, culture, and the broader and ever-changing milieu of copyright case law and legislation.

Legislative changes in the past few decades have often weighed in favor of rights holders' protections, while case law has at times provided users with balancing safe harbors. As the complexity of the copyright landscape has increased, so too has the number of academic librarians assigned to this nascent subspecialty. Indeed, this chapter is a result of reflections and readings made by two librarians finding their space in this new role.

A continuum of roles situated by risk tolerance can help librarians consider where and how they might contribute in their classrooms and broader communities. Should librarians act as counselors, educators, advocates, or activists or perhaps a combination of these roles, depending on issue and impact? The answer might change over the course of a career and as the broader discourse continues to evolve. However, the use of reflective and active practices in the classroom at the institutional level and in the larger library community will remain relevant. These practices will resonate with students, colleagues, and other policymakers only if they recognize and challenge the underlying tensions between content creators, users, and rights holders.

This is difficult and important work, necessitated by the broader attempt to balance innovation and the public good with an incentive to create. Hopefully, the evolution of this aspirational legal framework will include more librarians' voices as the balancing mechanisms of copyright should be informed by evidence from both user and creator communities.

## Endnotes

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