

WHAT'S GOING ON WITH COPYRIGHT AGENCY AND THE UNIVERSITIES?

WHAT IS COPYRIGHT AGENCY?

Copyright Agency is a collecting society. Its main business is collecting payments on behalf of publishers, authors and artists for the use of their copyright content.

WHY DID COPYRIGHT AGENCY COMMENCE PROCEEDINGS AGAINST UNIVERSITIES IN THE COPYRIGHT TRIBUNAL?

For many years, all 39 universities have had an agreement in place with Copyright Agency, negotiated for the sector by Universities Australia. The agreement historically set out the amount that universities were required to pay for statutory licence copying, and the administrative arrangements that applied to that copying.

The last agreement terminated on 31 December 2018. After a period of negotiation, the universities and Copyright Agency couldn't agree on the amount to be paid from January 2019. So, in November 2018, Copyright Agency commenced proceedings in the Copyright Tribunal to ask it to decide for the parties what the amount and administrative arrangements should be.

WHAT IS THE RELATIONSHIP BETWEEN COPYRIGHT AGENCY AND UNIVERSITIES?

Copyright Agency has been declared by the government to collect payments from universities for their use of the statutory licence. The statutory licence is set out in the Copyright Act 1968 and permits universities to copy certain amounts of copyright works – like 10% or one chapter – for educational purposes. The universities are required to pay equitable remuneration for the use of the statutory licence and if they can't agree with Copyright Agency what that amount is, either party can ask the Copyright Tribunal to decide this for them.

Of course, universities only need to rely on the statutory licence if no other licence applies to the copying. Commercial licences negotiated directly with the publisher apply for most of the content that is copied for educational purposes in universities. Universities also rely on open access licences to make content available to their students.

WHY COULDN'T WE AGREE ON HOW MUCH TO PAY IN NEGOTIATIONS?

In recent years, universities have had much less need to rely on the statutory licence than they did in the past. University copying under the statutory licence has dropped by about 50 per cent since 2013. There are two main reasons for this. Firstly, more of the content used in universities is covered by licences negotiated directly with publishers. This is good news for copyright owners because it means that they receive payments directly from universities via their publishers, without the need for Copyright Agency to act as a "middle man". Secondly, universities are increasingly relying on open access licences for the content that they make available to students.

The university sector informed Copyright Agency that the amount they pay for the statutory licence must be reduced to reflect the significant decline in the amount of actual statutory licence copying that is occurring.

DOES THAT MEAN THAT UNIVERSITIES DON'T WANT TO PAY TO USE CONTENT?

Universities pay hundreds of millions dollars a year directly to publishers to make content available to their students. They will continue to do this, regardless of the outcome of these proceedings.

This dispute isn't about universities not wanting to pay for the content they use, rather it is about the diminishing importance of the statutory licence as a means of making content available to students. Copyright Agency is not willing to accept that this change in practice should be reflected in the amount of money that it receives from the sector.

WHAT DOES IT HAVE TO DO WITH ME?

WILL I STILL RECEIVE PAYMENTS FROM COPYRIGHT AGENCY?

Some academics are members of Copyright Agency and receive payments for the use of their work by universities under the statutory licence. People who are entitled to receive payments from Copyright Agency under this scheme will continue to do so, no matter the outcome of these proceedings.

SURELY ROYALTY PAYMENTS WILL DECREASE IF THE EQUITABLE REMUNERATION IS REDUCED

If the Copyright Tribunal ultimately determines that the amount that the sector pays Copyright Agency should be reduced, it will be up to Copyright Agency to determine how to distribute a smaller pool of funds among different types of rights holders.

Copyright Agency does not currently disclose the formula that it uses to determine how much particular rights holders should receive when their work is copied under the statutory licence. For example, Universities Australia has no way of knowing whether Copyright Agency currently pays the authors of freely available internet content the same amount that it pays authors of expensive scholarly monographs. Because of this, it is not possible to predict what academic authors will receive from Copyright Agency compared to their income in previous years.

COPYRIGHT AGENCY APPROACHED ME – WHAT SHOULD I DO?

If you are contacted by Copyright Agency or its lawyers, Banki Haddock Fiora, seeking assistance in relation to these proceedings, please contact the university's Office of the General Counsel, or Universities Australia directly (email Liz Stanton l.stanton@universitiesaustralia.edu.au).

It would be appreciated if any university employee who is contacted in this way could discuss the position with the relevant General Counsel or Universities Australia before agreeing to talk to Copyright Agency or its lawyers.

WHAT DO I DO IF I HAVE QUESTIONS?

In the first instance you should contact your university's Office of the General Counsel and ask to speak to whomever is managing the matter on behalf of your university.

If you or the General Counsel need further information then you can contact Liz Stanton, Policy Director, Copyright at Universities Australia by emailing l.stanton@universitiesaustralia.edu.au.