

**Report on CAUT conference: Controlling Intellectual Property:
The academic community and the future of knowledge
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This was a two day conference aimed at academic staff, students, policy makers and members of the general public on a number of issues surrounding intellectual property (IP)¹ at universities across Canada. More specifically, it addressed the growing tension between private ownership of knowledge and the public mission of academic institutions.

The keynote speaker was Michael Geist, Canada Research Chair of Internet and E-commerce Law at the University of Ottawa. He is also a regular columnist on technology law issues for the Toronto Star and the Ottawa Citizen. For more information on Geist and his views on copyright, see <http://www.michaelgeist.ca/content/blogsection/0/125/> .

Geist is well-known for his support of a “balanced approach” to copyright reform – retaining compensation for creators **and, in parallel**, facilitating access to information. His presentation focused on copyright and control in the digital age. Geist offers some solutions which may help lead to a balanced approach. These are summarized in the following 10 points:

1. Digital Rights Management
2. Open Access
3. Open Licensing for teaching materials and dissemination of research
4. Expanded Fair Dealing (exception in Copyright Law in Canada)
5. Use CCH (Commerce Clearing House Canadian Limited)
6. Drop Internet exception
7. National Digital Library
8. Get rid of Crown copyright
9. Freeze copyright terms
10. Focus on contractual limits.

1 “The term intellectual property refers broadly to any creation of the mind that can be owned. The concept encompasses two subcategories – industrial property (patents, trademarks, industrial designs, etc.) and copyright (literary and artistic works).” excerpt taken from a CAUT discussion paper: Discussion paper on academic staff and Intellectual property. This paper can be accessed at : http://www.caut.ca/en/about/committees/dp_intellectualproperty.pdf

The conference offered, in total, five panel discussions with facilitated breakout groups for ensuing discussion. Naturally, much ground was covered over the two days, so I will simply go over major themes. Probably, the most fundamental issue for academic staff and students in Canada is awareness and understanding of copyright law. There is a great lack of clarity and much confusion surrounding the use of fair dealing in universities (the fair dealing clauses of the Canadian *Copyright Act* allow users to make single copies of portions of works for "research and private study."). Do we really have to consult university lawyers each time we are unsure about an issue related to copyright? This confusion is what prompted Laura Murray from the English Department at Queen's University, to create her fair copyright web page (<http://www.faircopyright.ca/>) which "aims to explain copyright law clearly and fairly". Murray suggests that "balance" is key for users to become creators.

David Robinson, Associate Executive Director of CAUT and Professor Myra Tawfik of the University of Windsor discussed the impact of Canada's trade and treaty obligations on its IP legislation and, inversely, the ability that Canada has in determining the content of such treaties. As an example, Robinson gave an overview of the impact of GATS (General Agreement on Trade in Services) on higher education within the increasingly market-oriented delivery of education services across borders. According to Robinson, "the GATS is a legally-binding treaty that commits members to a liberalization agenda, not just by eliminating barriers to trade and investment, but also by encouraging domestic liberalization in the form of privatization, commercialization and deregulation of public services like higher education." These would probably impact on hiring preferences, provision of subsidies, quotas on institutions able to deliver services, etc. Thus far, Canada has made no commitments on education services in the first round of the GATS. But with growing pressure to liberalize education, how long will this last?

It should be noted that Canada has signed two WIPO (World Intellectual Property Organization)-

administered treaties. First, the Berne Convention for the Protection of Literary and Artistic Works, usually known as the Berne Convention. This is an international agreement about [copyright](#), which was first adopted in [Berne, Switzerland](#) in 1886 with several amendments, the last being in 1979. Secondly, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). The WCT and WPPT, known as the WIPO "Internet Treaties", contain a general update of the legal principles underpinning international protection of copyright and the rights of performers and phonogram producers in cyberspace. However, it should be noted that signing an international treaty is not binding. Binding obligations start when content of treaty signed by a country is integrated to domestic legislation.

Most panel discussions addressed the fact that current legislation (Bill C-60) is simply not balanced enough certainly in the context of higher education but also for the Canadian society at large. The current government has remained silent on the issue of copyright, and many policy observers fear they are working behind the scene. It is also feared that Canada will be pressured by the US to adhere to their more protectionist approach to copyright. For a good overview of the current situation, see Laura Murray's page "Where things stand" at the following address:

<http://www.faircopyright.ca/policyreform.html#wherethingsstand>.

How are Canadian universities and academic staff dealing with the present situation? According to Paul Jones, CAUT Professional Officer and Intellectual Property Policy Analyst, "most member associations have secured a range of IP ownership rights for academic staff". His overview of the current situation of IP in collective bargaining is based on the CAUT discussion paper cited in the footnote of this report. Martin Phillipson of the University of Saskatchewan presented his experience as chief negotiator for his faculty association. His advise: 1) the "business model" Canadian universities are adhering to is here to stay and within this context the best associations can do is to secure the rights

that academic staff already have; 2) it is crucial not to neglect the language concerning IP in collective agreements. Too often, the language related to IP in collective agreements is outdated and this is often harmful in protecting the rights of members.

Recurrent themes in this conference were “forms of resistance” to traditional intellectual property models in higher education and “alternative solutions” to current copyright. Kathleen Shearer of the Canadian Association of Research Librarians (CARL) discussed the Open Access movement which promotes free and open access to knowledge, in digital format, in the Sciences and Humanities. Andy Kaplan-Myrth presented the work of Creative Commons Canada, an organization which first emerged in the US to promote balance, compromise and moderation in copyright. More importantly, CC Canada offers an interesting selection of “alternative fair use” licenses which can encourage faculty members to share their research freely online while protecting their rights as creators.