PLEASE DISTRIBUTE WIDELY

As announced in June (PDAD&C #64, 2012-13), the University gave notice to Access Copyright that it did not wish to renew the License on its current terms but would be prepared to negotiate for renewal at a substantially lower royalty rate. Access Copyright responded that it was prepared to enter into negotiations. Accordingly, after considerable preparatory work by both parties (including data analysis by means of a review of a sample of anonymized documents uploaded to Blackboard), the University has commenced negotiations with Access Copyright. The negotiations (which, by agreement between the parties, are being conducted on a confidential basis) are continuing in November. The University is aiming for a date by the first week of December, at the latest, for conclusion of negotiations one way or the other.

If, despite the University’s good faith efforts, the parties are not able to reach an agreement about a fairly-priced royalty rate that takes into account the changing legal, technological and educational sector landscape, the University needs to prepare for a) the expiry of the License on December 31, 2013; and b) operating thereafter without a License and outside of any interim or final tariff that might be set by the Copyright Board.

What the License Requires Upon Expiry

Among other things, the License requires that, upon expiry, the University “shall immediately use reasonable efforts to (i) prevent access to Digital Copies of [Access Copyright] Repertoire Works made under this agreement and stored on a Secure Network under its control, and (ii) inform all Authorized Persons [faculty, students, etc.] that the [University] no longer has a license from Access Copyright for the use of Repertoire Works”.

Each instructor should already have a good sense of the specific content of what has been uploaded to Blackboard, but to prepare for the contingency that the University may be unsuccessful in persuading Access Copyright to accept a royalty rate that the University views as fair, all instructors will be asked to do the following:
1. Review the content of all documents uploaded to Blackboard or other learning management system (LMS).

2. Focus only on published works. In other words, the instructor need not do anything about their own notes or other non-published materials that have been posted.

3. Confirm whether the published works in question are covered by an existing license (other than the Access Copyright License) that permits Blackboard uploading. This information can be found on the item’s record in the library catalogue. Works covered by such a license can remain on the LMS. Again, Library staff will be available to assist, so please send inquiries to copyright@library.utoronto.ca.

4. For published works that are not covered by a license other than the Access Copyright License, it will be necessary to ascertain if the published works are within the Access Copyright Repertoire. Access Copyright has always argued that works are included within its Repertoire unless the rights holder advises them to the contrary so that the work may be identified on the “Exclusions List”. Thus, if a work is not on the Exclusions List, it may be within the Repertoire. Here is the link to the Exclusions List. Additionally, you may use the Access Copyright Repertoire Look-Up Tool. Library staff will be available to assist instructors in confirming whether a particular work may be within the Repertoire, so please send inquiries to copyright@library.utoronto.ca.

5. If a work appears to be within the Repertoire and is not otherwise licensed, the instructor should apply the University’s Fair Dealing Guidelines, and the additional guidance in the Copyright Roadmap and in the Copyright FAQ and make an assessment as to whether the work is within the scope of “fair dealing” and thus available for use under the Copyright Act without payment or permission.

6. If a work appears to be within the Repertoire, is not otherwise licensed, and is likely not covered by fair dealing, the instructor will need to be prepared to remove the work as of January 1, 2014 unless a transactional license can be procured from the rights holder before that date. Library staff are available to assist with transactional licenses, but exploring this option takes time and the likelihood is that many transactional licenses would not be able to be secured within such a short time frame. If a work has to be removed, the instructor may wish to explore alternate materials that are already licensed, or are clearly within the fair dealing exception.
Operating without a License and outside of an interim or final tariff

If the University needs to operate without a License and outside of an interim or final tariff ordered by the Copyright Board, it will follow the approach taken by UBC, York, and other universities that have been doing so over the last one to two years. Such an approach involves a combination of: good copyright guidance and education, so that instructors have a clear sense of what is permitted; reasonable use of exceptions permitted under the Copyright Act, such as fair dealing; and greater use of transactional licenses, open source material and other similar resources. In addition, such an approach will require instructors to ensure that, with respect to course packs, which would again (as before the current License) be subject to a per page royalty if they use Access Copyright Repertoire materials, they only have course packs copied at copy shops that are licensed by Access Copyright.

Distribution of this Memo

Please ensure that this memo is distributed to all instructors. The University will provide further updates as required. The cooperation of everyone is greatly appreciated – copyright compliance is everyone’s business, and working together makes the task much easier.