

ACCESS COPYRIGHT OPT OUT ANNOUNCEMENT

Dear Colleagues,

I am writing to advise you that Simon Fraser University is transitioning to a new copyright environment. SFU gave notice to Access Copyright (AC) that it will not operate under the interim tariff after August 31, 2012. This will have little immediate affect on the usual copying and use of materials for teaching, research and administration. There is no issue regarding course packs and distance education materials for the fall semester. Permissions were obtained under the interim tariff and, in future, will be obtained through an alternate source.

The background, reasons and practical implications of this decision are outlined below as well as the actions the University is taking to support faculty, staff and students relating to copyright activities.

Why has SFU made this decision?

AC is an organization that collects copyright fees for publishers and authors. For over 18 years SFU paid copyright fees to AC under a license negotiated by the Association of Universities and Colleges of Canada (AUCC) on behalf of all Canadian universities outside Quebec. Universities paid these fees for copying print material from scholarly journals, textbooks and other published works. It facilitated making photocopies in situations when copyright permission was required and to produce paper course packs for sale to students.

There are several reasons for the decision to opt out of the AC interim tariff. In recent years and months, the landscape with respect to copyrighted materials and their use has changed:

- First, course materials are increasingly delivered to faculty and students in digital format under existing subscriptions to online journals, books and databases licensed by the Library. SFU has over 400 license agreements with publishers valued at \$6 million, under the terms of which SFU pays copyright fees.
- Second, Canada's recently amended copyright law (*Copyright Modernization Act*) is pending proclamation later this year and contains beneficial reforms. It will expand exceptions for educational use, communicating and reproducing publicly available material on the Internet, displaying material for the purpose of education or training and permitting digital inter-library loan of works acquired by the University Library. In addition, statutory damages reform limits the potential liability for non-commercial copyright infringement.
- Third, recent court decisions are helpful because they limit the definition of copy by excluding online links to digital material and expand the definition of "fair dealing" for which no license is required. Fair dealing refers to the use of copyrighted materials for research, private study, criticism and news reporting. The Supreme Court of Canada issued decisions on July 12, 2012 reaffirming that fair dealing is a user's right which: 1) must be interpreted in a broad and liberal manner, 2) is flexible and technology neutral and 3) expands the scope of making and distributing copies for a teaching purpose under the "private study" and "research" fair dealing exceptions.
- Fourth, new business models and technology are emerging in a competitive and rapidly evolving digital publishing marketplace in which we can take advantage of digital learning materials and tools through direct licensing. We are in a period of transition from print to digital delivery of education content. This environment offers the potential of innovative

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service at a time when faculty, education consultants, learning technologists, higher education institutions and the information technology and publishing industries are rethinking how course materials are developed and disseminated in a digital world.

- Fifth, the alternatives to copyright protected works requiring permission or compensation are growing. No one method offers a solution, rather it involves using some combination of these methods to meet the needs of each situation.

As a result of these trends, the relevance and value of a license with AC has diminished greatly because the majority of copying authorized under the tariff or model license no longer requires payment of copyright royalties.

Yet, in this changing context, AC applied to the Copyright Board of Canada in 2010 for approval of a tariff that included a substantial increase in the fees paid by each university outside Quebec to AC. The tariff (at \$45 per full-time equivalent (FTE) student) would increase our annual licensing fee paid to AC by \$690,000. Earlier this year, the AUCC negotiated on behalf of all member universities, a model license with AC. Under this agreement our annual licensing fee paid to AC (at \$26 per FTE student) would be \$300,000 more than the previous AC agreement (currently we pay \$3.38 per FTE student). Moreover, the record keeping, surveying, reporting and auditing under both the tariff and model license would increase our administrative burden and costs.

Consequently, SFU, along with many universities outside Quebec, has decided to operate without an AC license. Other opt out universities include The University of British Columbia, University of Northern British Columbia, University of Calgary, University of Saskatchewan, University of Winnipeg, University of Waterloo, University of Guelph, York University, Queen's University, Carleton University, University of New Brunswick and Memorial University.

How will this decision affect the work of faculty, staff and students?

It is important that faculty, staff and students continue to abide by the requirements of Canada's copyright law when making or distributing copies in paper and digital form. Failure to do so could lead to a claim of copyright infringement and might result in serious consequences for the university and individuals.

Print and digital course packs and distance education materials will continue to be produced through the Bookstore and the Centre for Online and Distance Education (CODE) using an alternate source for permissions. There will be no disruption in service.

It is recommended that faculty and instructors continue to consider alternative course materials, such as:

- Use digital resources that are accessible through existing licenses managed by the Library
- Use a textbook in the course and, where practical, use the same textbook to enable students to take advantage of the used book resale and rent-a-textbook markets
- Create a custom textbook in collaboration with a publisher
- Place materials on Library reserve

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- Provide students with a list of references, which they can find in the Library or that are openly accessible on the Internet to which they can link directly using the supplied URLs
- Use material with the appropriate Creative Commons license
- Use material in which you are the copyright owner
- Use material where the copyright owner has granted you permission
- Use Open Access material that is available online, such as journals, textbooks and institutional repositories, which allow non-commercial reproduction and use of academic works without permission or compensation
- Use material in the public domain
- Use the fair dealing exceptions where appropriate

What steps is SFU taking?

A copyright working group, appointed earlier this year, studied our situation and options. We are continuing with plans that are underway to put ourselves in the best possible position to operate outside the tariff and model license. For example, the executive decided earlier in the summer that a full-time continuing copyright officer position would be created and that the copyright function and officer be located in the University Library. A search for a University copyright officer is in progress. In addition, the Bookstore and CODE successfully tested the use of an alternate source to clear copyright for course packs and distance education materials. Next steps include:

- Expand the current network of professional staff providing university-wide copyright advisory services to include Liaison Librarians and Teaching and Learning Centre staff
- Create institutional resources such as guides, tools and workshops for faculty, staff and students about copyright law, creators' and users' rights and how SFU manages copyright
- Redesign and expand the copyright website as a central source of information about copyright and how to use copyrighted material in a manner that complies with Canada's copyright legislation

Making this change will require time, patience, persistence, a concerted effort and adjustments. It will gradually result in a fundamental shift in practice and our conventional approach, increasing our institutional capacity to manage copyright and make us more self-sufficient and independent at less cost. It will enable exercising user rights while continuing to respect the intellectual property rights of creators.

Updates and information regarding copyright will be communicated as they become available. If you have any questions, please contact the University Archivist at iforsyth@sfu.ca.

Judith Osborne
Vice-President, Legal Affairs and University Secretary
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