

MEMORANDUM

To: Deans, Department Chairs, School Directors

From: Janice Deakin, Provost & Vice-President (Academic)

Copy: Presidents of SOGS, USC, Employee Groups, Principals of Affiliated University Colleges

Date: December 3, 2013

Re: **Expiry of Western's Licence with Access Copyright**

Please ensure that this memorandum is distributed to all faculty and all instructors in courses.

Western currently has an agreement with Access Copyright under which the University pays an annual fee of \$26.00 per full-time-equivalent student and in return receives a licence that enables faculty, students and staff to use certain copyright protected works without seeking permission or paying a royalty.

Western has been in discussions with Access Copyright since last June when notice was given that the University did not wish to renew the existing Licence on its current terms but rather would be prepared to negotiate for renewal at a substantially lower royalty rate that takes the changing copyright landscape into account. Negotiations, which by agreement between the parties, are being conducted on a confidential basis, have continued and the University expects to reach a conclusion, one way or the other, in the near future.

In the event that a satisfactory agreement cannot be reached, the University needs to prepare for the expiry of our Access Copyright Licence on December 31, 2013; and thereafter operating without a Licence and outside of any interim or final tariff that might be set by the Copyright Board.

Terms of our Access Copyright Licence

Among other things, the Licence requires that, upon its 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 licence from Access Copyright for the use of Repertoire Works".

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Obligations for the Western Community

Each instructor should already have a good sense of the specific content used in their courses and uploaded into OWL, Western's Learning Management System (LMS). In order to prepare for the contingency that Western may be unsuccessful in reaching a new agreement with Access Copyright, all instructors are asked to take the following steps (which are summarized in the [Western Copyright Decision Map](#)).

1. Review the content of all documents uploaded to OWL or any other learning management system employed for online courses or course materials.
2. Focus only on any published works. No analysis is necessary for personal material, instructor notes or other non-published matter.
3. Determine whether the published works in question are copyright protected. See [Copyright: Term Protection Guidelines](#) for more information.
4. For copyright-protected published works, determine whether the amount copied or uploaded is substantial. See [Copyright: Substantiality Guidelines](#) for more information.
5. For substantial amounts of copyright-protected published works determine whether the published works in question are covered by any existing licence, other than the Access Copyright Licence, that includes uploading the work into the LMS in its acceptable use terms. For example Creative Commons licences and Western Libraries' negotiated digital licences may permit uploading into an LMS. This information can be found on the item's record in the libraries' [classic catalogue](#). Works covered by such a licence can remain on the LMS with no further action needed. See [Copyright: Licence Guidelines](#) for more information.
6. For copyright-protected published works where a substantial portion is copied, determine whether the published works are within the Access Copyright Repertoire. You may use the [Access Copyright Repertoire Look-Up Tool](#) to search for works included in the Access Copyright Repertoire.
7. If a work appears to be within the Access Copyright Repertoire and is not otherwise licensed, the instructor should apply the University's [Fair Dealing Exception Guidelines](#), and the additional guidance in the [Copyright Decision Map](#) in order to make an assessment regarding the applicability of fair dealing or other statutory exception that would allow use under the provisions of the Copyright Act without payment or permission.
8. For material uploaded into the LMS, if a copyright-protected work of a substantial amount appears to be within the Repertoire, is not otherwise licensed, and is likely

not covered by fair dealing or other statutory exception, instructors 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. Book Store staff are available to assist with transactional licenses, but exploring this option necessarily takes time. See [Copyright: Seeking Clearance Guidelines](#) for more information. The likelihood is that it would be impossible to secure licenses by January 1, 2014. 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. Alternatively, if the work will not be needed until late in the course, it should be removed and a transactional licence can be pursued so that the work can be subsequently reloaded onto the LMS.

9. For Course Packs, material printed before December 31st is covered under the current agreement and can be purchased by students into the new year. The Book Store is endeavouring to print sufficient runs to cover current known course enrolments, however in some limited circumstances, a significant increase in class size in January for instance, deficiencies of available stock in the Winter term may result. All requests for course packs for the summer term and beyond include provision for clearing copyright as necessary.
10. Instructors may have materials mounted on the LMS for a course that is not being offered in the Winter term of 2014. For such courses the materials should be “unpublished” so as to remove them from the LMS, and the materials should be reviewed as described in items 1 through 8 above before being remounted.

Operating without a License and outside of an interim or final tariff

If Western needs to operate without a License and outside of an interim or final tariff ordered by the Copyright Board, the University will follow the approach taken by UBC, York, and other universities that have been doing so over the last one to two years. Western’s copyright literacy strategy will involve a combination of the provision of information resources and services available through a new website (copyright.uwo.ca/) and a program of workshops and information sessions planned for the new year. The goal is to ensure that members of the Western community can make informed decisions when using the published work of others in research and teaching, and have a clear sense of their user rights under the Copyright Act, as well as how to avoid breaking copyright law and breaching the rights of copyright owners.

Western will provide further updates as required. The cooperation of the entire Western community is greatly appreciated. Complying with Canada’s Copyright law is everyone’s business and working together makes the task much easier.

A handwritten signature in black ink, appearing to read "Janice", followed by a large, stylized circular flourish.