

ACCESS COPYRIGHT PUBLISHER'S
AFFILIATION AGREEMENT
AND APPENDICES

DEFINITIONS

"Agreement" includes Appendices A to C and the Publisher's Affiliation Form;

"copy" means a reproduction of all or part of a Work which The Canadian Copyright Licensing Agency, doing business as Access Copyright or CANCOPY, is authorized to license by the Publisher's Affiliation Form, and "copying" has a corresponding meaning;

"collective licences" means licences granted by a collective society, including comprehensive or blanket licences applicable to the copying of the Works of a number of Rightsholders and transactional licences applicable to a Work or Works of a single Rightsholder;

"collective society" means a collective society as defined under the *Copyright Act*, R.S.C. 1985, c. C-42, as amended from time to time, inside or outside Canada, which is authorized to license or administer reproduction rights on behalf of Rightsholders;

"Rightsholder" means a copyright owner or a person entitled to authorize copying of a Work; and

"Work" means a published work protected by copyright.

GRANT OF RIGHTS

- 2.1 You as Rightsholder are making this Agreement with The Canadian Copyright Licensing Agency ("us" or "we") as a collective society, for all of the Works covered by the Publisher's Affiliation Form, with the exception of any Works that you have designated as excluded.
- 2.2 You grant us, with respect to your Works, the exclusive licence to exercise and manage the reproduction rights (the "Rights") listed in Appendix A through collective licences. This grant of an interest in copyright authorizes us to license other persons to copy your Works, either directly or through agreements with other collective societies, and applies only to the extent that you own or control the Rights being granted. For greater certainty, you retain the right to license your Works through agencies and organizations that are not considered to be collective societies.
- 2.3 We will permit copying of your Works only within our Licensing Guidelines. The current version of these guidelines is contained in Appendix B, but they may be changed by our Board of Directors, as explained in paragraph 9.4 below.
- 2.4 We will make reasonable efforts to license people who want to copy your Works, and we will collect appropriate fees for this copying.
- 2.5 You may set the fee that we must collect when licensing all or some of your Works on a transactional basis, but not when your Works are included in a licensing scheme encompassing the Works of a number of Rightsholders and the tariff is calculated by us as an average or blended rate by genre or by discipline or is set by a decision of the Copyright Board.
- 2.6 If your Works are to be included in a licensing scheme applicable to the Works of a number of Rightsholders, you may propose to us a specified tariff for particular uses of Works or of certain categories of Works. We will take this into account in negotiating licences or in filing a proposed tariff with the Copyright Board.

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- 2.7 You may exclude any or all of your Works from any of our licences. Provided that you notify us, we will implement a request for such an exclusion prior to issuing a new licence or as soon as permitted by the terms of an existing licence.
- 2.8 You will use reasonable efforts to ensure that we have an accurate list of your works. You will advise us if you are no longer entitled to deal with the Rights with respect to particular Works initially covered by the Publisher's Affiliation Form.

REVENUE DISTRIBUTION

- 3.1 All payments that The Canadian Copyright Licensing Agency makes to you will follow the Revenue Distribution Guidelines. The current version of these guidelines is contained in Appendix C, but they may be changed by our Board of Directors. There is one exception to this, as explained in paragraph 3.4 below.
- 3.2 You warrant that you will fulfill all contractual obligations with respect to royalty payments, either according to your own contractual arrangements with a creator, another publisher or other entity, or according to the default splits we specify to you on the distribution reports, unless we indicate to you that payment is being made directly by us. You agree to co-operate with us to facilitate our contact with such persons for the purpose of distributing our payments.
- 3.3 Subject to paragraph 3.1, we will pay you any money that we have identified as owing to you no later than the end of our financial year following the financial year in which that money was collected.
- 3.4 If we collect money but do not have sufficient information to distribute it in the way described in the Revenue Distribution Guidelines, our Board of Directors has the right to approve any other way of distributing that, taking relevant factors into account, the Board considers fair to all Rightsholders, including those whose rights we administer through agreements with other collective societies.
- 3.5 In order to validate sales information for the purpose of a distribution described in paragraph 3.4 only, we may require you to provide such information under the signature of an accountant accredited by a recognized accounting body.
- 3.6 In working out how much we owe you, we will deduct a percentage to cover our operating costs. This amount will be fixed from time to time by our Board of Directors. We may deposit any money collected in interest-bearing accounts or appropriate securities and apply any resulting interest or other earnings to our operating costs.
- 3.7 If the amount we owe you on a payment date is less than the minimum set by our Board of Directors, then that payment will be withheld until the first payment date when that minimum has been reached.
- 3.8 By the end of each February, we will mail you a statement of payments made in the previous calendar year, together with a T5 form or other appropriate documentation for taxation purposes.

THE CANADIAN COPYRIGHT LICENSING AGENCY COPYRIGHT NOTICE

- 4.1 You agree that you will use all reasonable efforts to include the following copyright notice on all of your publications, or similar language referring to The Canadian Copyright Licensing Agency:

ACCESS COPYRIGHT PUBLISHER'S AFFILIATION AGREEMENT

No part of this publication may be reproduced, stored in a retrieval system or transmitted, in any form or by any means, without the prior written consent of the publisher or a licence from The Canadian Copyright Licensing Agency (Access Copyright). For an Access Copyright licence, visit www.accesscopyright.ca or call toll free to 1-800-893-5777.

COPYRIGHT INFRINGEMENT

- 5.1 You acknowledge that The Canadian Copyright Licensing Agency may do whatever is necessary or advisable, in our opinion, to prevent and stop infringement of the Rights, including the commencement of proceedings in our name.
- 5.2 You agree to give us any reasonable assistance we need to prevent or stop infringement of the Rights, including co-operating in our proceedings against anyone who has infringed the Rights.
- 5.3 We will pay the cost of all legal proceedings that we commence in connection with an infringement of the Rights. If we recover any money, then it will be used first to offset our expenses. If there is any excess, it will be distributed to you in accordance with this Agreement.

TERM

- 6.1 This licence will last for two years and be automatically renewed for further two-year periods. However, it may be ended at any time by either The Canadian Copyright Licensing Agency or you by giving written notice of not less than three months.
- 6.2 Any notice given under paragraph 6.1 will take effect upon the expiry of any of our licences in which your Works are included, and in any event within 15 months of when we receive such notice.

INDEMNIFICATION

- 7.1 You agree to compensate us in full for any loss resulting from any proven claims made against The Canadian Copyright Licensing Agency caused by any misrepresentation by you as to the extent to which you own or control rights in Works or your failure to advise us in accordance with paragraph 2.8 that you are no longer entitled to deal with particular rights.

DISPUTE RESOLUTIONS

- 8.1 Any dispute arising out of this Agreement will be referred to arbitration, in which case the *Arbitration Act*, S.O. 1991, c.17, will apply.

AMENDMENTS TO THIS AGREEMENT AND APPENDICES

- 9.1 No amendment to the main part of this Agreement will take effect unless it is in writing and signed by both you and The Canadian Copyright Licensing Agency.
- 9.2 You will send us updates to the Publisher's Affiliation Form, or amend the Publisher's Affiliation Form online, if necessary, to update the Works covered by the Publisher's Affiliation Form.

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9.3 You may amend the Publisher's Affiliation Form to include or exclude any additional Right. In order to do this, you must send us a replacement application, which will take effect when we receive it. As soon as reasonably possible, such Right will be dealt with appropriately in our new licences and in our existing licences when they are renewed or when licensed repertoire is updated.

9.4 Our Board of Directors may amend Appendices B and C. Any amendments to these Appendices must be delivered to you by mail and will take effect three months after mailing. Before they take effect, you may give us written notice that you are terminating this Agreement, in accordance with paragraph 6.1.

FURTHER DOCUMENTS

10.1 You agree to sign any further documents that we reasonably request so that we may exercise the rights you have granted to us under this Agreement.

NO RIGHT TO ASSIGN

11.1 We will not assign your rights under this Agreement without your prior written consent. However, we may authorize other collective societies to license and collect revenues on our behalf.

NOTICES

12.1 All notices, requests, consents and amended Appendices or Publisher's Affiliation Forms permitted or required under this Agreement must be in writing and sent by mail to your address or our address (or any other addresses specified in writing). Such notices, requests, consents and amended Appendices and Publisher's Affiliation Forms may be sent electronically, where permitted by law.

GOVERNING LAW

13.1 This Agreement will be exclusively governed by and interpreted in accordance with the relevant laws of the province of Ontario and Canada, and treated as a contract both signed and wholly performed in Ontario.

AUTHORITY OF SIGNATORIES

14.1 The person whose signature appears on the Publisher's Affiliation Form confirms that he or she has the authority to sign this Agreement.

APPENDIX A

RIGHTS LICENSED TO THE CANADIAN COPYRIGHT LICENSING AGENCY

Your affiliation with The Canadian Copyright Licensing Agency allows us to manage certain copying rights for you, described below as the BASIC RIGHT. In addition, you may choose to have us manage additional rights in your Works. These are optional, and must be indicated by checking the appropriate box on the Publisher's Affiliation Form. Definitions are provided below, and in some cases these also set out the circumstances in which these additional rights will be licensed. This appendix describing the BASIC RIGHT and optional rights selected by you replaces any previous document that you signed describing rights granted by you to us.

1 BASIC RIGHT (PRINT TO PRINT)

Your affiliation with The Canadian Copyright Licensing Agency allows us to license the following:

- (a) any copying by reprographic process, which includes facsimile reproduction by photocopying and xerography;
- (b) duplicating from a stencil;
- (c) copying onto microfilm (including microform and microfiche);
- (d) copying, including transcription or drawing, onto acetate or other material for an overhead or slide projection;
- (e) for the sole purpose of making paper copies,
 - (i) typing or word-processing without adaptation, and
 - (ii) reproduction by a copier (such as a Xerox Docutech or Kodak 1500 Series) that makes intermediate digital copies in order to make paper copies; provided that nothing in clause (e) of this BASIC RIGHT authorizes distribution of any electronic file in any electronic form in any way whatsoever, including on disk or over a computer network; and
- (f) facsimile transmission.

2 RETRANSMISSION RIGHT (COPYRIGHT OWNERS ONLY)

Your affiliation with The Canadian Copyright Licensing Agency allows us to collect with respect to this right. Authorization is given by a compulsory licence under the Copyright Act and rightsholders may only collect royalties through a collective society.

This is the right to collect or to authorize another collective society to collect royalties for the telecommunication of a Work to the public by means of a cable or other system that retransmits distant signals (television and radio) intended for free reception by the public. We may collect retransmission royalties for a Work which is included in a television or radio program, or for a Work on which a television or radio program is based. *This right does not include any right with respect to telecommunication of a Work in the form of alphanumeric text.*

3A DIGITAL CONVERSION RIGHT (PRINT TO DIGITAL)

Your approval is needed for us to license this right, and is to be indicated by checking the appropriate box on the Publisher's Affiliation Form.

This is the right to **convert** printed materials into digital form by any technological means, allowing:

- (a) storing on a user-owned digital recording medium or personal computer or a user-controlled network;
- (b) storing on a Web site;
- (c) transmitting to a personal computer controlled by the user or within a user-controlled network only; and
- (d) accessing, viewing, and printing.

The Canadian Copyright Licensing Agency may license these uses provided that:

- (e) The digital form is always a faithful and accurate reproduction of the materials.
- (f) The scope of this DIGITAL RIGHT will be strictly interpreted as only permitting the making of digital copies if:
 - (i) the Licensing Guidelines would permit the making of copies; and
 - (ii) a digital copy of the Work is not commercially available.
- (g) In any of our licences, this DIGITAL RIGHT will be limited to activities for business or organizational purposes of the licensed user, usually internal. Except when specifically approved by you, these uses will exclude:
 - (i) systematic or bulk reproduction and distribution of copies to persons not covered by one of our licences; and
 - (ii) any accumulation of material copied in digital format beyond the limits of the Licensing Guidelines.
- (h) We will not license storing on an open Web site except on a transactional basis and unless a fee for such copying has been set by the Rightsholder.
- (i) We will:
 - (i) ensure appropriate levels of record-keeping and compensation for copies made in digital format,
 - (ii) provide for deletion of all digital files no later than the termination of our licence, and
 - (iii) reserve the right to audit licensed users to ensure adequate security.
- (j) We will not license this right so as to result in competition with your own exploitation of your materials.

3B DIGITAL IMPORTATION RIGHT (DIGITAL TO DIGITAL)

Your approval is needed for us to license this right, and is to be indicated by checking the appropriate box on the Publisher's Affiliation Form.

This is the right to **import** materials from a computer database in digital form by any technological means, allowing:

- (a) storing on a user-owned digital recording medium or personal computer or a user-controlled network;
- (b) storing on a Web site;
- (c) transmitting to a personal computer controlled by the user or within a user-controlled network only; and
- (d) accessing, viewing, and printing;

The Canadian Copyright Licensing Agency may license these uses provided that:

- (e) The digital form is always a faithful and accurate reproduction of the materials.
- (f) The scope of this DIGITAL RIGHT will be strictly interpreted as only permitting the making of digital copies if
 - (i) the Licensing Guidelines would permit the making of copies; and
 - (ii) the Work is not the subject of a technology-protection measure or provided through a password-protected Web site and further copying is prohibited by the licence providing access.
- (g) In any of our licences this DIGITAL RIGHT will be limited to activities for the business or organizational purposes of the licensed user, usually internal. Except when specifically approved by you, these will exclude:
 - (i) systematic or bulk reproduction and distribution of copies to persons not covered by one of our licences; and
 - (ii) any accumulation of material copied in digital format beyond the limits of the Licensing Guidelines.
- (h) We will not license storing on an open Web site except on a transactional basis and unless a fee for such copying has been set by the Rightsholder.
- (i) We will:
 - (i) ensure appropriate levels of record-keeping and compensation for copies made in digital format,
 - (ii) provide for the deletion of all digital files no later than the termination of our licence, and
 - (iii) reserve the right to audit licensed users to ensure adequate security.
- (j) We will not license this right so as to result in competition with your own exploitation of your materials.

4 ALTERNATE FORMAT RIGHTS

Your approval is needed for The Canadian Copyright Licensing Agency to license this right, and is to be indicated by checking the appropriate box on the Publisher's Affiliation Form.

This is the right to make copies in audio, braille, large print (by reprographic process), and machine-readable form, for persons who are blind, visually impaired or otherwise unable to view print because of a disability.

APPENDIX B

LICENSING GUIDELINES

The Canadian Copyright Licensing Agency's licences will permit your Work to be copied according to these guidelines:

- 1 The maximum proportion that can be copied from any Work will depend on the type of licence:
 - (a) 10% if the licence does not require full reporting of the Works copied;
 - (b) 15% if the licence does require full reporting of the Works copied;
 - (c) 20% if the copying is authorized under a transactional licence.

These limits apply whether the copying is in one sequence or taken from various parts of the publication.

- 2 If a Rightsholder sets the fee that we must collect under a transactional licence, the Rightsholder may also authorize us to licence the copying of up to 100% of the Work for such a licence.
- 3 For certain types of publications, there are exceptions to these limits that will allow a higher proportion of a Work to be copied:
 - (a) newspapers: an entire article, photograph or other item or the whole of a page can be copied;
 - (b) periodicals: an entire article, essay, poem, short story, play or reproduction of an artistic Work can be copied from an issue or volume containing other Works;
 - (c) in-print book: an entire article, essay, poem, short story, play or reproduction of an artistic Work can be copied from a book containing other Works, or an entire chapter if the chapter is less than 20% of the book;
 - (d) out-of-print book: up to 100%, after we confirm that the Work is out-of-print in all available editions.
- 4 When licensing the making of anthologies or coursepacks, we will impose restrictions on the portion of a Work that can be copied, the number of excerpts from the Works of any one author or publisher, and the portion of copying from any type of Work.
- 5 Depending on the type of licence, the number of copies that can be made will usually be limited to one copy for each student, library user or employee, together with a reasonable number for teaching, supervisory or internal production purposes.
- 6 If copies are required for the licensed user's external activities, this will usually be permitted only under a licence requiring full reporting.
- 7 The Canadian Copyright Licensing Agency will not knowingly authorize copying for:
 - (a) partisan, public political activities unless authorized by the Rightsholder; and
 - (b) endorsement or advertising of a product, service, cause or institution where the nature of the material to be copied and the proposed use could prejudice the creator's honour or reputation.

- 8 Except when expressly authorized by the Rightsholder and, in the case of 8 (b) only, when converted to alternate format for handicapped students, we will not authorize copying from:
- (a) unpublished Works;
 - (b) any materials intended for one-time use;
 - (c) commercial newsletters;
 - (d) originals of artistic Works (including photographs and prints); or
 - (e) print music.

APPENDIX C

REVENUE DISTRIBUTION GUIDELINES

- 1 Unless you advise us that you have an arrangement referred to in paragraph 4, we will distribute royalties according to the arrangements described in these guidelines.
- 2 When only the publisher of a Work is affiliated with us, the publisher may ask us to pay that publisher both the publisher's and the creator's share of the royalty for any specific Work. In accepting the creator's share, the publisher agrees to send that money to the creator as soon as reasonably practicable. If the publisher fails to do this, then we may deduct the relevant amount from any subsequent payment to the publisher.
- 3 Payments identified by us in respect of specific Works will otherwise be distributed as follows:
 - (a) articles and other material copied from newspapers
 - (i) if contributed by a freelance creator 100% to creator
 - (ii) otherwise 100% to publisher
 - (b) any material in scholarly periodicals in which the creator has assigned copyright to the periodical 100% to publisher
 - (c) any other material copied from periodicals 35% to publisher, 65% to creator
 - (d) any material copied from trade books 40% to publisher, 60% to creator
 - (e) any material copied from educational and technical books 50% to publisher, 50% to creator
 - (f) any material copied from out-of-print books 100% to creator
 - (g) any material copied from a Work that cannot be classified within (a) - (f) above 50% to publisher, 50% to creator
- 4 Nothing in this Appendix prevents creators and publishers from making different arrangements from those described herein. We will do our best to implement them in the future, provided we are notified in writing about these arrangements.

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