

## **Beyond the Patriot Act: Rulings from the Office of Foreign Asset Control (OFAC) and their Effects on Canadian Libraries and Researchers**

In the aftermath of the 9/11 tragedy, much attention has been paid to American legislation that affects individuals and organizations outside of the United States. Most of the focus has been on the USA PATRIOT Act but there are also serious implications of the rulings from the United States Department of the Treasury's Office of Foreign Assets Control (OFAC). In recent years, this body has come out with a series of rulings that are directed at countries under U.S. interdiction, such as Cuba, Iran, and Sudan, but which also affect scholarly communication involving Canadians. There are two sides to this issue: one side deals with information *to* embargoed nations while the other deals with the provision of information *from* embargoed nations. While I am interested in both aspects, much of my work has concentrated on the former.

The University of Calgary Library has subscriptions to tens of thousands of electronic journals and other electronic information products. Almost all of these are not loaded locally and are accessed at a distance by users; almost all are not housed on Canadian-based servers. Some of this material is owned by the Library, some is leased. All of these products are governed by licenses, negotiated between the publishers (the *licensor*) and the Library (the *licensee*).

Interpretations of the OFAC regulations has caused some major journal publishers, such as the American Medical Association (AMA) and the Society of Photo-Optical Engineers (SPIE), to insert clauses into their recent electronic product licenses that could forbid a licensee from providing access to authorized users (such as University of Calgary faculty, staff, and students) located in countries under American embargo (authorized users from proscribed countries who are physically *at* the University of Calgary would be exempt from this prohibition).

There are a number of potential problems with this situation. Many Canadian universities have established distance education programs and other cooperative ventures in countries that fall under or might fall under U.S. embargo. Many Canadian researchers work with colleagues in these countries and teach and conduct research there. As result, university libraries are obliged under their own rules of fairness to supply all information resources to authorized users in nations interdicted by the United States.

If the University Library decides to provide licensed information to authorized users in embargoed countries in the face of a license that supposedly prohibits this, there could be repercussions. While the Library would be helping users and striking a blow for academic freedom and freedom of information, if these actions were discovered, the Library could lose access to the content in question immediately. If this material was "owned", the case could be argued for some

sort of continued access; however, if this material was leased, access could be lost completely.

Some university libraries, such as the University of Calgary, have attempted, so far unsuccessfully, to remove the contentious clauses from the AMA and SPIE licenses. Unfortunately, most Canadian university libraries have not paid much heed to this and have signed the licenses, especially the AMA license.

On a related note, most other licenses from American-based publishers, even if they don't deal with embargo issues directly, now include "government restrictions" as something for which they will not be responsible (along with natural disasters, war, and the like).

It is worth noting that the OFAC regulations are interpretations of American legislation, subject both to interpretation and to emendation. Two pieces of legislation passed by Congress, the Berman Amendment (1989) and the Free Trade in Ideas Amendment (1994), state that "informational materials" are specifically excluded from any trade sanctions. The OFAC regulations constitute very narrow interpretations of these amendments and it can even be argued that the OFAC regulations do not even apply to the provision of information *to* embargoed countries.

Currently, there is little hard factual evidence about the effects of the OFAC regulations and the consequences that might flow from them. My research will examine this issue beginning with the following:

How are other libraries handling this issue?

- What options are available for amending the situation? Is there wording that can be employed in e-product licenses that will allow libraries outside of the United States to feel secure in providing access to all licensed products for all authorized users? Will this wording also allow American publishers to feel confident that they are responding to the dictates of their own government?
- What options are available to institutions and individual users if a licensor removes access to a leased or purchased product?

Andrew Waller  
Collections Services