

February 28, 2024

Kelly Hannah-Moffat, Vice-President, People Strategy, Equity, & Culture
Heather Boon, Vice-Provost, Faculty & Academic Life

Dear Heather and Kelly,

Re: Microsoft and other computer programs

We are writing to respond to your letter from February 13, 2024, and to follow up on the discussion we had yesterday about retirees' access to computer programs.

First, we appreciate your willingness to reconsider the Administration's position with respect to retirees' access to Microsoft and other computer programs. When you reconsider it, we hope you will recall the explicit commitment that the Governing Council made in 2005 to retired faculty and librarians. The commitment was made in the University's [Statement of Commitment to Retired Faculty and Librarians](#). As the Statement's preamble notes:

An academic career is a unique opportunity to make significant contributions to scholarship and education, and the desire to contribute in this way does not end with retirement - for many the development of scholarly activity is a lifetime goal. ... [R]etired faculty and librarians remain vitally engaged in university life by continuing to contribute their knowledge and experience to the University's mission. Retirees thus represent substantial resources of intellect, creativity and service on which the University can and does draw. The University is committed to welcoming and encouraging the participation of retired faculty and librarians in the intellectual and social life of the University community across all three campuses.

We do not wish here to dive into a detailed technical discussion about the precise meaning of this provision or another; we trust this won't be necessary. Instead, we sincerely hope that you will see that asking retirees to demonstrate active engagement on an ongoing basis as a precondition for access to vital computer programs stands in stark contrast to the vision of this Statement and the expectations and the commitments made therein. If the University's commitment to welcome and encourage the participation of retirees in the University's intellectual and social life is to be believed, the Administration must formulate its operational processes accordingly. It should presume that retirees are and remain continually engaged and not require them to demonstrate it.

Second, the Administration's response to our proposal relied heavily on the language of the contract between the University and Microsoft, which, according to you, was the reason for restricting retirees' access to Microsoft products and, impliedly, prevents granting such access in the future. We disagree with your interpretation of the contract and we provide the reasons for this disagreement below. But

even if we were convinced of the correctness of your interpretation of the contract, we do not believe that the limitations in the current contract are determinative of the issue: they may *explain* the Administration's past decision but not necessarily *justify* it, and even if the current contract were too restrictive, it does not follow that the Administration could not amend it or negotiate a less restrictive one now or in the future.

Third, we disagree with your interpretation of the contract and we fail to see the basis for your restrictive interpretation of that contract. As you wrote in your February 13, 2024, letter, the contract with Microsoft refers to two groups: (1) Students, and (2) Education Qualified Users, and we agree that the latter is the relevant group for the present purposes. As you noted, the contract defines an Education Qualified User as "an employee or contractor (except Students) who accesses or uses an Education Platform Product for the benefit of the Institution." We agree that this definition is relevant, but we strongly disagree with your very narrow interpretation, which neither the plain language of this definition nor any purposive interpretation thereof compels.

You say that "a condition of obtaining a license as an Education Qualified User is that the individual is either an employee or contractor of the University. For many retired faculty members and librarians, this is not the case", and you explain that only retired members who are "actively engaged in teaching, research, graduate supervision or another activity in support of the academic mission of the unit and University" could be viewed as "involved in the performance of work for the 'benefit of the Institution'."

With respect, your interpretation reads into the definition words that cannot be found there and ignores the words that are clearly there. Contrary to your explanation, the definition of Education Qualified User is not limited to "an employee or contractor (except Students) who is actively engaged in teaching, research, graduate supervision or another activity in support of the academic mission of the unit and University" or "who performs work for the benefit of the Institution." These qualifiers to who is an employee or contractor *do not* appear in the definition. Instead, rather than focusing on the *status* of the user, namely the nature of the legal relations between the user and the University (and whether the user is an employee or an independent contractor hired to do work for the University), the definition focuses on the *purpose* of the user's access or use. While the definition requires some contractual relations between the user and the Institution, it does not focus on whether the person accesses or uses an Education Platform Product *to perform work for* the Institution but whether the University grants them access to use it *for the benefit of the Institution*. Contractor, in this context, is not limited to "one who contracts *to do work for* or *supply goods to* another"¹ but is, more broadly, "a party to a contract",² who, in this case, is given access and permission to use an Education Platform Product *for the benefit* of the Institution.

And since the contract does not define or restrict what may constitute the benefit of the Institution, it is up to the Institution to decide what benefits it and it is entirely appropriate for the Administration to define it expansively. Indeed, several relevant University policies already support such an expansive view and provide a solid basis for rejecting the narrow interpretation that you articulated in your letter. As noted above, the "University is committed to welcoming and encouraging the participation of retired

¹ CONTRACTOR, Black's Law Dictionary (11th ed. 2019) (italics added).

² *Id.*

faculty and librarians in the intellectual and social life of the University". Clearly, the University considers retired faculty and librarians' *participation in the intellectual and social life of the University* as beneficial to the institution. Such participation can take many forms and is not limited to *performing work* for the University, nor does it require to be *actively* engaged in teaching, research, graduate supervision or another activity in support of the academic mission of the unit and University. A university committed to welcoming and encouraging retirees' participation in its intellectual and social life would welcome and encourage *any* participation: of those who wish and are able to participate *actively* and of those who only wish or are only able to participate more passively; of those who wish to contribute by teaching, research, or graduate supervision and of those who wish to partake in the University's intellectual and social life in myriad other forms.

Likewise, your narrow interpretation and focus on work *for* the University is inconsistent with the University's view that faculty members' and librarians' engagement in professional activities *outside* the University, including those from which they may derive supplementary income, advances the mission of the University and "represent an important mechanism for disseminating the knowledge and expertise of faculty members [and librarians] to the community and for contributing to the faculty members' [librarians'] and students' intellectual and professional development."³ Clearly, the University considers such activities beneficial to the University, even if they do not involve work *for* the University.

For these reasons, we disagree with your interpretation of the contract between the University and Microsoft and with your conclusion that granting licences to retirees would be contrary to both the letter and spirit of the contract, and we believe that your narrow view of what constitutes a contribution to the academic mission of the University is incompatible with the much broader vision enshrined in the University's [Statement of Commitment to Retired Faculty and Librarians](#) and various other University policies.

We cannot stress hard enough the practical and symbolic importance that our retired and retiring members attach to continued access to computer programs; how vital such access is to their ability to participate in the intellectual and social life of the University; and how insulting and unnecessarily painful cutting them off from access to these tools after decades of committed service has been. We hope that you give adequate weight to these considerations as well.

Best wishes,

Terezia Zorić
UTFA President

Ariel Katz
UTFA Vice-President, Salary, Benefits, Pensions and Workload

Raymond Kwong
Retired Member, UTFA Negotiating Team

³ [Policy on Conflict of Interest - Academic Staff, June 22, 1994](#); [Policy on Conflict of Interest – Librarians, March 9, 1995](#).