

Complete Policy Title:
**Copyright Ownership and a Policy Framework
for Licensing Instructional Material**

Policy Number (if applicable):

Approved by:
Board of Governors

Date of Most Recent Approval:
October 26, 2017

Date of Original Approval(s):
October 26, 2017

Supersedes/Amends Policy dated:

Responsible Executive:
Provost and Vice-President (Academic)

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SECTION I: INTRODUCTION

PREAMBLE

1. McMaster University strives to exemplify learning-centred, innovative pedagogy, and encourages openness, collaboration, and partnerships in teaching. New instructional modalities using digital, blended and online learning platforms are rapidly evolving. Instructional Materials now include not only textbooks and course packs, but also podcasts, vidcasts, and multimedia materials in interactive formats, learning modules, and other formats that will continue to evolve.
2. This evolution has prompted McMaster to outline principles to facilitate the use, sharing, improvement and commercialization of innovative Instructional Materials. It has also provided an opportunity to update its policy framework and affirm faculty ownership of copyright with respect to Instructional Materials in both online and offline environments.
3. The principles outlined in this policy are drawn from and build on the *Canadian Copyright Act* (the "Act"). Section 13(1) of the Act states that the author should be the first owner of the copyright. Section 13(3) of the Act states that an author's employer is the first owner of the copyright where the work is produced in the course of the author's employment, in the absence of any agreement to the contrary. This document is intended to serve as the "agreement to the contrary" respecting the University and its Instructors.
4. This policy applies to all original Instructional Materials created at the University, including non-print materials. Ownership of copyrightable works created by students is governed by the University's [Ownership of Student Work](#) policy. This policy framework should be consistent with related regulations of the School of Graduate Studies, specifically the licensing agreement signed by graduate students when they submit their dissertations. The *Act*, and employment contracts or collective agreements, as applicable, govern ownership of copyrightable works created by Non-Teaching Staff. Commercialization has been defined in the definitions section of this policy.

PURPOSES

5. The purposes of this policy are:
 - a) To clarify ownership of copyright of Instructional Materials at the University for Instructors;
 - b) To affirm the principle that Instructors are normally the first owners of copyright in the Instructional Materials that they produce, whether analog or digital, and whether offline or online; and to identify the conditions under which this is not the case;
 - c) To encourage and reward Instructors who create new Instructional Materials; and
 - d) To establish a framework to administer best practices in licensing arrangements for Instructional Materials and to facilitate the use, sharing, improvement and dissemination of Instructional Materials.

SECTION II: COPYRIGHT OWNERSHIP

6. The University affirms that copyright of Instructional Materials belongs to the Author(s), except in the special cases listed below.
 - a) The University hereby retains ownership of copyright in Administrative Documents as defined in the definitions section of this policy.
 - b) When the University employs Non-teaching Staff for the express purpose of creating or producing works which may be eligible for copyright, or when there is an explicit requirement in a job description for this responsibility (e.g. and without restricting the generality of the foregoing computer programmers, editors, film makers, media producers), the University hereby retains ownership of copyright in the works so produced, unless prior alternative provisions are made in writing.
 - c) In cases of a Work of Joint Authorship created by Instructors and Non-Teaching Staff working under the normal conditions of employment, the University and Instructors shall be considered joint owners of the copyright in the work. If Non-Teaching Staff are not working within the normal conditions of their employment, then both they and the Instructors may claim, between themselves, joint ownership of the copyright in the work. For the purposes of this policy, normal conditions of employment at the University would mean:
 - i) Non-Teaching Staff would be under a contract of employment with the University;
 - ii) the copyright work would be made in the course of the Non-Teaching Staff's employment; and
 - iii) there is no agreement to the contrary.

With respect to condition (ii) above, what constitutes "in the course of the Non-Teaching Staff's employment" would be set out and determined by the Non-Teaching Staff's employment contract.

FAIR DEALING, OPEN ACCESS, EDUCATIONAL EXCEPTIONS AND THE PUBLIC DOMAIN

Fair Dealing

7. In many situations involving the use of course materials, neither the University nor individual staff or faculty require a formal license to use materials created by someone else, if such materials are in the public domain, or if the proposed use fits under the rubric of fair dealing. Such situations include providing photocopied textbook limited excerpts to a class as part of course materials, use of individual slides or pictures with attribution. As well, voluntary sharing of course materials between course Instructors may be a normal part of course development and should not require formal licensing arrangements. When thinking about fair dealing it is strongly advised to consult with the appropriate personnel at the University. A list of individuals who can provide assistance can be found on the McMaster University Copyright website.

Creative Commons and Open Access

8. Creative commons works are those copyright works that do not require payment for use, but may require the user to adhere to certain license terms attached to the work. Open access refers to scholarly research that is made freely available on the internet. In a scholarly environment, open access often focuses on journal articles. Similar to creative commons works, open Access removes the need to pay for access to research output and, increasingly, to research data, allowing researchers to more easily disseminate their own work as well as access other people's scholarly work. However in both cases it is important to read and review the license attached to the copyright works.

Educational Exceptions

9. The *Act* sets in place certain fair dealing and educational exceptions that allow certain uses of copyright works, including course materials, without permission of the copyright owner. As such, in some cases, obtaining a license for, or ownership of, copyright in course material may not be necessary for the use of the materials in a course.

Public Domain

10. Some Instructional Materials may be in the public domain. The public domain means that the copyright term of a copyrighted material has expired or that the copyright holder has placed a copyrighted material into the public domain and thus it is available for all to use or build upon.

SECTION III: POLICY FRAMEWORK FOR LICENSING INSTRUCTIONAL MATERIAL

11. The University may determine that it requires a license for certain Instructional Materials in which it does not have ownership. In such cases, the University will initiate steps to obtain a license for only those rights that it needs for those rights that it requires. The following are intended to provide guidance in setting the terms of standard copyright licenses. Cases requiring a formal license might include:
 - a) efforts to sell or commercialize the Instructional Materials;
 - b) efforts to make the Instructional Materials available via an open license or to otherwise license the Instructional Materials to third parties; or
 - c) instances where the University has assisted and invested substantially in the construction of a course or Instructional Materials, and/or wishes to continue to offer this course for a period of time despite the absence of the original developer of the Instructional Materials.
12. When the University requires a license for use of Instructional Materials in which the copyright is, according to the provisions set out above, owned by Instructors and/or Non-Teaching Staff, the University shall obtain a license from the owner(s) of the copyright for use of such Instructional Materials as soon as possible, preferably before either Instructors or the University have committed significant time and resources to the project. Licensing arrangements such as standard form licenses/license agreements shall be made available by McMaster's Office of Legal Services for use in such licensing procedures. It is strongly recommended that any standard form license/license agreement should be executed prior to the development of a course. The licensing arrangements should detail:
 - a) the specific individual, joint, and collective works to be covered by the license;
 - b) the expected lifespan of the course in which the Instructional Materials will be used, and, in relation to that, the length of the license;
 - c) the possibility of license renewal;
 - d) how the copyright holder(s)'s departure from the University, incapacitation, or death will affect the terms of the license. Licensing arrangements should normally leave the University in a position where the University can continue to use and adapt Instructional Materials even if one of the developers of the material is no longer teaching the course. At the same time, some Instructors may desire that certain materials associated with their person, such as videos of lectures, be used only for limited times;
 - e) the control of the economic rights associated with the copyright work(s) (see *Copyright Act* s. 3). The approach taken in Section 5 to works of Joint Authorship can serve as a guide in this instance; and
 - f) the control of the moral rights associated with the copyright work(s) (see *Copyright Act* s. 14).
13. When copyright licenses in Instructional Materials are obtained from external or temporary contractors (e.g., in the case of sessional Instructors), they should be obtained by the University in exchange for compensation beyond the normal remuneration provided for the teaching of a course.

14. The University, in recognition of the importance of Instructional Materials to the careers and career mobility of Instructors, should not, as a general rule, make any license that would prevent Instructors from creating or teaching similar or related courses at the University or another institution, whether online or offline. This is particularly true in the case of Instructors whose term of employment at the University is not permanent.

FOR WORKS OF JOINT AUTHORSHIP WHERE THE UNIVERSITY IS A JOINT AUTHOR

15. Net Revenue, that is revenue net of Direct Production Costs, received from the distribution of works of Joint Authorship will be divided between the Author(s) and the University according to their degree of ownership of the Instructional Materials.
 - a) In the absence of any agreement between the University and the Author(s) as to the exact degree of ownership there shall be no authorization of any of the exclusive rights enumerated in the *Act* such as but not limited to reproduction, adaptation, distribution, or publication, by any of the Joint Authors or any authorization thereof until there is agreement in writing between the Joint Authors. Such an agreement should determine the exact percentage of ownership in the Instructional Materials. If an agreement cannot be reached, an adjudicator jointly agreed to by the Provost and the relevant bargaining unit shall resolve the dispute.
 - b) Upon reaching an agreement, the Net Revenue received after recovery by the University of Direct Production Costs will be divided between the Joint Author(s) according to the agreed upon percentage of ownership and a sliding scale. This sliding scale encourages the creation and development of innovative Instructional Materials representing the distribution of royalties.
 - c) The table below shows two examples of a royalty distribution sliding scale assuming a 50/50 Joint Authorship agreement and ongoing income. Note, the first example incentivizes faculty in cases where net revenue is not expected to increase over \$100,000 for the life of the project and assigns a higher proportion of the royalties for the first \$100,000 in net revenue.

Example 1	Joint Authors	
Accrued Net Revenue	% Author(s) Royalty	% to the University
up to \$10,000	100	0
over \$10,000 under \$50,000	75	25
\$50,000 to \$100,000	50	50
over \$100,000	0	100
Example 2	Joint Authors	
Accrued Net Revenue	% Author(s) Royalty	% to the University
up to \$10,000	100	0
over \$10,000 under \$50,000	75	25
\$50,000 or over	10	90
In both examples, the distribution of royalties shall be made annually.		

16. The University and the other joint author(s) each should grant to each other non-exclusive copyright licenses and the rights to acquire and use copies of the copyright materials at the cost of reproduction without payment of fee or royalty.
17. In a licensing arrangement the University will normally seek to recover all Direct Production Costs. Indirect Production Costs funded by the University will not be included in any calculation of Net Revenues.

SECTION IV: DEFINITIONS

Author

An individual who creates a copyrightable work

Administrative Documents

Documents created to support the University's ongoing administrative operations in relation to teaching, such as reports and memoranda, and would not normally include Scholarly Works defined below.

Collective Work

Any work written in distinct parts, by different authors, or in which works or parts of works of different authors are incorporated. (*Copyright Act R.S.C., 1985, c. C-42 s.2*)

Commercialization

The act of involving Scholarly Works, Collective Works or Works of Joint Authorship in commerce for a financial gain. The McMaster University, Hamilton Health Sciences, St. Joseph's Healthcare Hamilton Joint Intellectual Property Policy ('Joint IP Policy') also defines and governs the commercialization of intellectual property within the three institutions and thus this definition should be used in accordance with the Joint IP Policy.

Direct Production Costs

Costs directly incurred in the production and/or commercialization of the Instructional Materials and, without limitation, may include the following:

- printing, materials and processing
- advertising fees
- licensing or royalties paid for use of copyright materials
- instructional design and multi-media expertise
- development stipends paid to the author
- Cost of course releases to support the development of Instructional Materials
- direct fees paid for distribution
- hosting

Indirect Production Costs

Costs which exist independent of the decision to develop Instructional Materials and are associated with providing the infrastructure for the development of Instructional Materials including but not limited to provision of functional space and technology.

Instructional Materials

A work created by Instructors intended for the purposes of teaching activities at the University.

Instructor

The employees of University or of a college affiliated with the University who hold the academic rank such as professor, associate professor, assistant professor, adjunct, or lecturer (*McMaster University Act, 1976, s.1(j)*), including Clinical Faculty, Contractually Limited Appointments and Sessional Lecturers and those who are teaching credit-granting courses at the University.

Member of the Institution

The Instructors, Non-Teaching Staff and Students of the University.

Net Revenue

Revenue less all Direct Production Costs relating to publication and commercialization of the Instructional Materials.

Non-Teaching Staff

The employees of the University and of a college affiliated with the University who are not members of the Instructors (*McMaster University Act, 1976, s.1(e)*)

Owner

The person or entity who retains legal control over all (or some) of the rights granted under copyright law.

Revenue

All revenue or other consideration generated by the commercialization of Instructional Materials excluding Weighted Grant Units (WGU's) and tuition.

Student

A person who is registered in a course of study approved by the Senate (*McMaster University Act, 1976, s.1(i)*) and includes a post-doctoral fellow.

Scholarly Works

Works comprising traditional academic materials such as, without limitation, lecture notes, laboratory manuals, articles, books, artifacts, works of visual art, maps, charts, plans, photographs, engravings, sculptures and music, no matter in which format any of the foregoing materials may have been recorded or embodied including, without limitation, a computer readable format, where any of the foregoing material has been created by someone who is a member of the Instructors unless they have otherwise agreed in a document in writing. (Definition adapted from s.4.3(a) of McMaster Joint IP Policy).

Work of Joint Authorship

A work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors (*Copyright Act, R.S.C., 1985, c. C-42 s.2*)