

Complete Policy Title:

**Distribution of Income from
the Sale of Instructional
Materials**

Policy Number (if applicable):

Approved by:

Board of Governors

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March 16, 1981

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Supersedes/Amends Policy dated:

Responsible Executive:

Provost and Vice-President (Academic)

Enquiries:

[University Secretariat](#)

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A. PREAMBLE

As faculty members continue to improve and refine their courses there is increasing interest in developing new learning materials as well as the traditional text book. These new materials may include audio visual components (slides, audio-tapes, videotapes, film) and programmed texts. There is evidence to indicate that these learning resources can be sold.

The copyright sections of this policy apply to all original teaching and learning materials created at McMaster University including non-print materials.

For purposes of this policy statement, references to reproduction and use of copyright materials shall for convenience be referred to as publication or variation thereof as the context may require.

B. PURPOSES

The purposes of this policy are:

1. to encourage and reward faculty members who are interested in creating new, high quality teaching materials;

2. to specify how the income from the sales of teaching materials should be distributed;
3. to clarify ownership of copyright.

It is necessary to clarify ownership in the context of the Canadian Copyright Act (see Appendix A). Section 12(1) of the Act states that the author should be the first owner of the copyright. Section 12(3) of the Act states that an author's employer (i.e. the University) 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" on behalf of McMaster University and its academic and non-academic staff.*

C. PRINCIPLES

1. Since teaching and scholarly research are both important, principal functions of the University, faculty members are expected to spend their time and other University resources in high quality, creative work in teaching, research and other scholarly activities.
2. The author(s) of teaching materials should hold the copyright on them for the same reasons that they hold copyright on their other creative work, unless their employment contract specifically provides otherwise.
3. If the author(s) chooses to publish for sale the materials, using University production resources, the income generated should be allocated in such a way that:
 - i. the author(s) receives a royalty;
 - ii. funds accruing to the University should be used first to meet production and distribution costs;
 - iii. remaining funds should be used for the continued encouragement of teaching excellence.
4. The University, in so far as is possible, should assist McMaster author(s) in publishing and distributing educational materials.
5. In the event that McMaster University publishes the materials, the amount of royalty paid to author(s) should be based on a sliding scale designed to increase the likelihood of some initial royalty to the author after production and distribution costs have been met, while providing the University with income if sales are high.

6. There should not be any attempt to recover development funds, granted for the development of teaching materials, directly from the sale of the particular resources produced by those grants. Replenishment of the grant fund should occur through 3(c) above. The principle here is that development funds are intended to enable teaching improvement projects regardless of whether or not they might produce any income.
7. The policy developed from these principles should be in conformity with regulations of the School of Graduate Studies, specifically the licensing agreement signed by graduate students (see Appendix B*).

D. POLICY

1. COPYRIGHT OWNERSHIP

- 1.1 The University affirms the traditional practice that copyright in instructional materials produced by faculty members belongs to those faculty members, except in the special cases listed below. The University extends to non-faculty professional and support staff, and to students, these same rights, namely, that ownership of copyright will belong to the author, except in the specific cases listed below.
 - a. When the University specifically directs or requests a faculty member or directs or requests a member of the non-faculty professional staff or support staff to undertake work that is the subject of copyright, the University may reserve to itself the ownership of copyright in the work so produced if notice of such intention is given by the University in writing prior to creation of the work.
 - b. When the University employs non-faculty professional staff and support staff or students 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 reserves to itself the ownership of copyright in the works so produced, unless prior alternative provisions are made in writing.
 - c. When the work is produced by a faculty member with direct assistance of a member of the University non-faculty professional or support staff who is working under the normal conditions of his employment, then the University claims part-ownership of the copyright to the extent of the contribution of the non-faculty professional or support staff member. If the professional staff

member is not working with-in the normal conditions of his employment, then both he and the faculty member may claim between themselves total co-ownership of the copyright.

- 1.2 For those works eligible for copyright and in which the University claims a part-ownership [section 1.1(c)] then the University and the author each will assign and transfer to the other the right to acquire and use copies of the copyright materials at the cost of reproduction without payment of fee or royalty. Access to the copyright materials by third parties shall be the subject of a specific agreement between the University and the author. The agreement entered into by the University and the author will continue after the author's employment with the University is terminated, unless an agreement is made to the contrary.

2. DISTRIBUTION OF INCOME FROM AUTHOR-OWNED COPYRIGHT WORKS PUBLISHED BY THE UNIVERSITY

- 2.1 This section of the policy applies to the disbursement of net income received by McMaster as publisher from the sale of copyright materials published by the University where such copyright is totally owned by the author.
- 2.2 Net income is defined as the gross receipts received by the University from publication of copyright materials less all direct production costs relating to such publication and without restricting the generality of the foregoing, direct production costs shall include the following:
 - printing
 - materials and processing
 - advertising
 - postage and packaging
 - invoicing and administration of the distribution system
- 2.3 Development costs, when funded by the University, will not be deducted, except in special circumstances by written prearrangement with the author. The financial return to the University will occur through its share of the net income (see 2.5 below and PRINCIPLES above).
- 2.4 Prior to the distribution of net income pursuant to paragraph 2.5 hereof, the University shall be entitled to recover direct production costs.
- 2.5 After recovery by the University of direct production costs, the net income from the sale of such copyright materials by the University shall be distributed according to the following graded scale:

<u>Accrued Net Income</u>	<u>% Author Royalty</u>	<u>% to the University</u>
up to \$1,000	100	0
over \$1,000 under \$5000	75	25
\$5,000 or over	50	50

The distribution of royalties shall be made annually.

3. DISTRIBUTION OF INCOME FROM COPYRIGHT WORKS IN WHICH THE UNIVERSITY IS PART-OWNER

3.1 When the University claims part-ownership of copyright materials under section 1.1(c) above, the majority owner, either the author(s) or the University, will decide whether the copyright materials should be offered for publication to the University or to an outside publisher. In the event that the University shall publish copyright materials, it shall first recover out of the gross proceeds received from the publication of such copyright materials, its direct production costs.

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3.2 If the work is published and distributed by an outside publisher, any royalties received will be divided between the author and the University according to their degree of ownership of the copyright materials. In the absence of any agreement between the University and the author as to the exact degree of ownership there shall be no publication either by the University or an outside publisher until there is agreement in writing between the author and the University as to the exact percentage of ownership in the copyright materials and, upon reaching such agreement, royalties received will be divided between the author and the University according to such percentage of ownerships.

3.3 If the work is published and distributed by the University, the provisions of section 2 will apply.

ADMINISTRATION OF THE POLICY

The administration of the Policy for the Distribution of Income from the Sale of Instructional Materials will be carried out by the Vice-President (Academic).

¹ Appendix A and Appendix B are available from the Board of Governors (GH-210) or the Faculty Association (HH-103A). Appendix B is also available from the School of Graduate Studies.