

What should the **default** 'unbundled rights' be? In other words, **what policy should be in place to cover the largest number of faculty members without needing to negotiate individual agreements with each person? Do you agree or disagree with the following answers to questions?**

Does the type of work make a difference?

No – works created primarily for scholarly communication and recognition of professional competence (e.g. books, articles, reports, images, artistic productions) do not necessarily need to be treated differently from works created primarily for use in the classroom (e.g. instructional or course materials). In their traditional forms (i.e. print), these types of works have not been handled differently. Creation and control have been the principal factors taken into consideration. and investment (e.g. sabbaticals; percentage of workload devoted to curriculum development) has not influenced the handling of rights.

Are there works being created for instructional purposes that are clearly distinguishable from those created using traditional publishing methods?

Does the process for creation of the work make a difference?

Maybe – If electronic/online/computerized works are treated differently from works produced in traditional ways (i.e. as print journal articles, photographs, written lecture notes and tests), then a situation arises that

- a) may dampen enthusiasm among faculty for using technologies to promote learning and scholarship, resulting in underutilization and diminished returns on investment in technology infrastructure
- b) could increase the likelihood that management of IP moves farther away from those in the disciplines who are in the best position to judge its value for scholarly communication and teaching
- c) could lead to diminished access to innovative 'learning objects' or teaching methods or novel ideas if licensing and commercialization 'lock up' works and hinder their wide dissemination (as happened to scholarly journals)
- d) could tip the balance in favor of a 'work-for-hire' interpretation of copyright, thereby raising questions about academic freedom (e.g. who determines what is getting taught) and dislocating control over curriculum development and delivery away from faculty.

The publication process has been altered by growth of the Web and proliferation of opportunities for publishing scholarly materials. Scholarly works can be published by 'self-archiving' (e.g. SHERPA) or by contributing to digital repositories (e.g. pre-print archives, DOAJ, MERLOT, Gateway to Educational Materials, NSDL, DLESE). In some cases, these acts of publication alter where peer review and disclosure fit into the publication process (e.g. one needs to publish a work or 'digital object' in a repository in order to get it peer reviewed).

Under what circumstances should disclosure be made?

How should disclosure of 'substantial use of university resources' be handled? (e.g. workloads? written agreements? Activity reports?)

To whom should disclosure be mandatory? (e.g. Dean or Director? Chancellor? Director of IP?)

Are individual agreements necessary or should agreements only be necessary for exceptional situations?

Does the timing of publication of a work make a difference?

Yes – Working in a digital environment makes it possible to duplicate, display, perform, adapt, and distribute works (i.e. the 'unbundled' rights) far beyond the confines of a classroom or institution almost effortlessly and instantly. There may be few delays, as there were previously in the traditional publication process (e.g. with article manuscripts, laboratory manuals and sample data, photographs). Therefore, existing processes for disclosure and approval of works need to either

- i) be expedited by several orders of magnitude, so as not to impede instruction or progress in research
or
ii) rely on a default situation (e.g. presence of a written agreement for all, or absence of a written agreement for the large majority).

At what point in the publication process should disclosure be made?

Do the contributors to the publication of course materials make a difference?

Yes – Instructional designers and those in similar positions, whether classified by the institution as staff, faculty, or student, may not be directly involved in teaching, but as facilitators, their creative efforts may match those of a faculty member in selecting, articulating, and assembling course materials. In order to attract and keep talented staff and students to help with curriculum development and delivery, their contributions need to be acknowledged and rewarded in the unbundling of rights.

How can roles and contributions be defined?

Sample DEFAULT (i.e. without another written agreement) for ‘unbundled’ rights – Do you agree or disagree?

Works for which there is only **nominal use** of university resources

Faculty/staff/student author(s) would **retain the rights**, without obtaining permission from the University (i.e. formal disclosure) to:

- publish and distribute (i.e. make reproductions of) the work, provided that the University’s name or logo is not used in any way other than to merely record the author’s affiliation;
- borrow portions of the work for use in compilations;
- control display or presentation of the work;
- be identified as the author of the work, including the right to decide whether to allow the author’s name is to be displayed in association with the work;
- revise or adapt (i.e. make a derivatives) of the work;
- take course materials with them for their own teaching and research purposes, upon employment or attendance at another institution;
- use the work to achieve professional recognition and credit for creating the work, both inside and outside the University;
- share the work with peers in their discipline;
- receive profits from sale of the work;
- retain for the University the non-exclusive rights to reproduce, distribute, and display the work within the University, even if the author assigns some ownership rights to a third party
- be informed in advance before the University uses, reproduces, distributes, or archives the work

Faculty/staff/student author(s) would **offer the university** the rights to:

- have a non-exclusive license to publish and distribute (i.e. make reproductions of) the work
 - i) for the purposes of teaching, administration, or research within the University (its campuses, departments, institutes, and, if electronic, on a secure University network) and
 - ii) for a specified time period
- be notified by the author(s) of the availability of any adaptations or revisions (derivatives) of the work
- control the use and display of the University’s name, seal, or logo in association with the work
- require appropriate acknowledgement of university support in creation of the work.

Works for which there is **substantial use** of University resources:
(tied to negotiations for workload and continuation of funding)

Faculty/staff/student author(s) would **retain the rights** in a written agreement to:

- control over the use of the author(s) name(s) in association with the work regardless of the authors' current employment status or attendance at the University
- have first right-of-refusal for requests to revise or adapt (make derivatives) the work
- use the work for the individual's teaching, administrative duties, or research within the University
- negotiate a renewal of the University's non-exclusive license upon expiration
- receive professional recognition and credit for creating the work, both within and outside the University
- be informed in advance before the University uses, reproduces, distributes, or archives the work
- share in the profits from marketing/licensing/sale of the work

Faculty/staff/student authors would **offer the university rights** in a written agreement to:

- have a non-exclusive license to publish and distribute (i.e. make reproductions of) the work
 - i) for the purposes of teaching, administration, or research within the University (its campuses, departments, institutes, and, if electronic, on a secure University network) and
 - ii) for a specified time period
- control the display or presentation of the work within the University, having first consulted with the author(s) and obtained permission for use of their name(s) in association with the work
- control the use and display of the University's name, seal, or logo in association with the work
- request revision or adaptation (derivatives) of a work, giving first right for revision or adaptation to the original author(s)
- negotiate with a party external to the University in order to market/license/sell the work, having had prior negotiations with the author(s) regarding the terms and conditions for marketing/licensing/sale
- share in the profits from marketing/licensing/sale of the work to recoup investment in it

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