

**Addendum to
The University of North Texas Health Science Center
Intellectual Property Policy**

**Distributed Learning
Creation, Use, Ownership, Royalties, Revision and Distribution of
Electronically Developed Course Materials**

I. Introduction

This Addendum to the Intellectual Property policy addresses the use of distributed learning at the University of North Texas Health Science Center (UNTHSC). Distributed learning is a pedagogy whereby students are instructed via electronic transmissions, often utilizing electronically published course materials, at sites distant from the faculty member and the Health Science Center's campus. Electronically published course materials include but may not be limited to instruction delivered by the internet, telecommunications or other computer storage media such as CD-ROM or DVD. The purpose of this document is to protect the rights of both the faculty member and the Health Science Center and to encourage the offering of quality distributed learning programs. It should be noted at the outset that in all cases except work made for hire, the faculty member retains the ownership and copyright of the work as well as the ability to market the work commercially. Licensure, which is the right to market the electronically developed course materials, is addressed under the ownership and compensation heading in each of the five categories specified in Section III. Should faculty choose to develop a distributed learning course, this policy will be used to address the issues raised by the creation, use, revision and distribution of various forms of electronically published course materials and to outline the rights and responsibilities of each of the parties involved regarding ownership and royalty issues. For distributed learning operational guidelines, see the document entitled UNTHSC Key Requirements, Operational Policies and Procedures for Distributed Learning.

II. General Guidelines

A. Copyright Ownership

Faculty members are eligible for copyright in scholarly works, including electronically published materials, created on their own initiative. The Health Science Center will retain ownership of copyright in works created under contract or as works for hire.¹

¹ “work for hire”:

a work prepared by an employee within the scope of his or her employment; or a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audio-visual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a “work made for hire.” A “supplementary work” is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwards, pictorial illustrations, maps, charts, tables, editorial notes, and musical arrangements, answer material for tests, bibliographies, appendixes, and indexes. An “instructional text” is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systemic instructional activities.

The U.S. Copyright Act states that, in the case of work made for hire, the employer for whom the work was prepared is considered the author and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

Electronically published course materials created jointly by faculty authors and others, whose contributions would be works for hire, will be jointly owned by the faculty author and the Health Science Center. Any owner of copyright in electronically published course materials may secure copyright registration; joint owners may, but do not have to, agree to bear responsibility for enforcement of the copyright. Students own the copyrights of their works; therefore, faculty members must obtain permission from respective students prior to incorporation of student-authored work in a faculty-sponsored course. Specific ownership rights are addressed in Section III below.

B. Faculty Responsibility to Currently Enrolled Students

Faculty members have a responsibility to meet the reasonable needs of their currently enrolled students, including those needs best addressed by the use of technologies to make class materials readily available. For example, if recordings may be needed by remote or handicapped students, they should be created in the ordinary course of teaching and made available under reasonable circumstances. Electronically published course materials such as tape recordings and videotapes created in the ordinary course of instruction and not intended for use beyond the end of the current semester or by students other than those registered for the class are the property and responsibility of the faculty member who creates or authorizes them. Faculty should be willing to utilize technologies appropriate to the circumstances to make their course materials reasonably available to their currently registered students. Faculty may dispose of such materials in whatever manner they choose at the end of each semester and in accordance with the Records Retention Policy.

C. Course Development

Faculty may receive course release(s) for duties performed in the best interests of the Health Science Center's instructional program, including the development of electronically published course materials. Course release does not automatically determine the appropriate category to place the work. Normally, a course release would imply at least a minimal allocation of Health Science Center resources i.e. category II.

D. Revision Rights

Faculty members retain the right to update, edit or otherwise revise electronically developed course materials. In certain circumstances, a time limit should be placed upon the use of electronically developed course materials that are particularly time sensitive, regardless of who owns copyright, **to assure outdated material will be revised in a timely manner**. These rights and limitations may be negotiated in advance and may be reduced to writing. Absent a written agreement, each faculty member will have the right and moral obligation to revise work on an annual basis in order to maintain academic standards. If a faculty member chooses

to revise the work and such revision is done in a satisfactory manner, the faculty member retains the rights to full royalties as discussed below for another year. If the Health Science Center believes a revision is necessary and no timely revision is made or if the revision made, in the Health Science Center's opinion, does not maintain academic standards, the Health Science Center may refuse to market the product, or the Health Science Center may employ another **person** and charge the cost of updating the faculty member's portion of the revision against any royalties paid to the original author.

E. Royalties.

In accordance with the Intellectual Property Policy of the Health Science Center, faculty members shall receive all royalties that may accrue from the commercialization of electronically published course materials they create on their own initiative. Conversely, the Health Science Center retains all royalties that may accrue from the commercialisation of electronically published course materials created by faculty members pursuant to contract or as a work for hire, including electronically published course materials created as a condition of employment. Copyright law permits joint owners to pursue commercialization either jointly or separately, with accounting. Other circumstances may require review on a case-by-case basis (such as the creation of electronically developed course materials initiated by a faculty member, but using substantial Health Science Center facilities). In instances of joint ownership between faculty members where the Health Science Center also retains rights to royalties, the faculty members shall determine by written document the division of royalties. Absent a written document of division of royalties, the faculty members shall divide their share pro rata based on participation. Administration of policy regarding the specific division of royalties and category assignments for distributed learning courses is detailed in Section J below. Definitions of each category assigning ownership and royalties are discussed in Section III.

F. Contributed Materials

Use of materials not created by the author of electronically developed course material will be subject to the same liability limitations as authors of any published material. This includes images of audience members or guest lecturers without written permission for use of that material. In order to comply with copyright and privacy laws, it is a requirement of the creator of electronically published course materials (normally the faculty member) to obtain all permissions and releases necessary to avoid infringing copyright or invading the personal rights of others.

G. Use of Health Science Center's Name

Faculty members must observe the same requirements that apply in other contexts with respect to the use of the Health Science Center's name.

H. Protecting the Work

The Health Science Center will determine whether to register the copyright and will be responsible for enforcement of works that they have initiated and own exclusively. Faculty members will make such decisions on works they have initiated and take such steps to protect works they own. Any one of the authors of a joint work may register and enforce the copyright in the names of all owners, with accounting.

I. Retention of Nonexclusive License

Except in category I below, the Health Science Center shall retain a non-exclusive educational license to reproduce and use the electronically developed course materials in teaching Health Science Center classes on or off campus. Compensation to the faculty member for use of the course shall be as specified below.

J. Administration

The Office of Research and Biotechnology and the Intellectual Property Advisory Committee shall be responsible for the administration of this policy. The faculty member should first meet with his/her Department Chair/Unit Head and Dean/Supervisor to develop a mutually acceptable agreement regarding ownership, royalties, institutional resource commitment, and the category the electronically published materials will be assigned. The Dean/Supervisor will then forward a copy of this agreement to the Office of Research and Biotechnology and the Intellectual Property Advisory Committee for their review and final approval of category assignment. It will be the responsibility of the Intellectual Property Advisory Committee to assure that the policy is being applied in an equitable manner across the campus.

K. Implementation Requirements

All distributed learning courses or degree programs must adhere to UNTHSC policies and procedures for the implementation of distributed learning in order to be in compliance with Texas Higher Education Coordinating Board Rules and the distributed learning requirements of accrediting bodies.

III. Specific Categories Assigning Ownership and Royalties

It is the faculty member's responsibility to follow the procedures for category assignment and royalty allocation of electronically published materials outlined above in Section J. It is understood that in some circumstances this category classification may change based on a modification in Health Science Center support for the project.

Category I – Totally Faculty or Staff Generated

Description of Individual and Health Science Center Contribution:

The work resulted from an individual's efforts on his own personal time without any direct support from or through UNTHSC and without the use of any UNTHSC resources beyond those normally provided by the Health Science Center.

Examples:

1. A faculty member in Integrative Physiology works with a publishing company to create a Web-based course. The publishing company provides 700 hours of instructional design and production support and the course is mounted on the company's server. All of the work is done on the faculty member's own time, but some of the development is done on weekends using the faculty member's office computer. Health Science Center- licensed development software that is available throughout the department is also used. The course is mounted on a commercial server.
2. A professor in Biostatistics is approached by the publishing arm of a learned society to create a CD containing 2,000 images of evidence that this professor has photographed in preparing for classes over the years. The professor took the photographs on weekends using own camera and film, but on the department's copystand. The learned society creates and markets the CD.

Ownership and Compensation

The individual owns all intellectual property, may receive compensation for work and retains distribution rights.

Category II– Minimal Health Science Center Resources

Description of Individual and Health Science Center Contribution:

The work resulted from the individual's efforts with minimal resources above and beyond those normally provided.

Examples:

1. A faculty member works with Digital Inc., a Web course publishing company, to put the course, *Serving an Aging Population*, totally on the Web. The Health Science Center provides funds to purchase time from the Health Science Center's Biomedical Communications Department to videotape two hours of lecture to be streamed as part of the course. In addition, the Health Science Center Library

checks out to the faculty member one of two digital recording workstations for a period of two weeks. Digital Inc. spends over 300 hours recording materials provided by the faculty member and creating the Web course, and mounts the course on their server. The faculty member works on the project almost exclusively on their own time.

2. An adjunct faculty member who teaches Biomedical Sciences for the Health Science Center volunteers to put half of the course on the Web. The Health Science Center provides 30 hours of training on WebCT, the Web platform utilized. The Health Science Center also provides twenty hours of assistance in creating a Power Point Presentation to be used as part of the course. The adjunct faculty member spends 200 hours creating the course on their own time. The course is mounted on the Health Science Center's server.

Ownership and Compensation

The individual owns intellectual property and has the right to distribute the work. The individual may receive compensation for any distribution outside the Health Science Center course delivery. The Health Science Center has a non-exclusive educational license to use the work as part of UNTHSC course delivery. In such case, the faculty member will be compensated per student enrolled in a UNTHSC course at a rate negotiated with the Health Science Center or as otherwise agreed to by the Health Science Center and the faculty member.

Category III– Substantial Health Science Center Resources Are Provided

Description of Individual and Health Science Center Contribution:

The work resulted from the individual's efforts with substantial Health Science Center resources above and beyond those normally provided.

Examples:

1. A faculty member volunteers to make their department's Medical Interviewing Course totally available on the Web. The faculty member is provided with a course release in the Spring Semester and paid for a course in the Summer to develop the product, but also contribute some of her own time. The Health Science Center provides a substantial grant to purchase a digital camera to use in the project or a .5 FTE Web developer housed in the department for a semester to work with the faculty member. Personnel from the Health Science Center's Department of Biomedical Communications record speakers for the class, digitize audio and video, totalling over 300 clock hours of production and support services. The course is mounted on the Health Science Center's server.
2. The Health Science Center's Master of Public Health Program decides to offer the degree by taping courses and allowing employees of two public health departments to download the courses to view on their own schedules. Three

faculty from the MPH Program will rotate grading and answering questions for each course. A faculty member who teaches Epidemiology volunteers to offer the first course. During the next year, this faculty member is given a course release each semester and paid for two courses in the Summer. The Health Science Center funds production time in the Biomedical Communications Department for the production of the tapes. Biomedical Communications contributes significant hours in digitizing the tapes. The faculty member spends 60 hours over the year of their own time designing the course for television delivery. The Health Science Center mounts the course on its server.

Ownership and Compensation

The individual owns intellectual property and has the right to distribute it and receive compensation for any distribution outside the Health Science Center course delivery. The Health Science Center has a non-exclusive educational license to use the work as part of UNTHSC course delivery. In such case, the faculty member will be compensated per student enrolled in a UNTHSC course at a rate negotiated with the Health Science Center. The Health Science Center also has a non-exclusive commercial license to market the course outside the Health Science Center. If licensed for commercial purposes either by the Health Science Center or the faculty member, the Health Science Center and the faculty member will each receive a percentage of the royalty as negotiated. In case of multiple authors, the authors will share the royalty pro rata based on their participation.

Category IV– Work Made For Hire – Health Science Center Assigns Duty to Faculty or Staff Member to Develop a Work

Description of Individual and Health Science Center Contribution:

An employee of the Health Science Center was contracted to develop a specific product. The Health Science Center provided all resources for the work. The work was carried out totally as a part of the faculty or staff member's assigned time.

Example:

1. The Chair of the Manipulative Medicine Department assigns a faculty member to re-develop course that will be videotaped and broadcast the next year to sites in five states as part of a new Master's Program offered by the department. The faculty member is given course releases for the Fall and Spring Semester and is paid a task payment. All of the design and production work is done during working hours. The faculty member is assigned a .5 FTE research assistant for the academic year. The Department of Education and the Department of Biomedical Communications contributes 250 hours in the design and production of the videotapes.

Ownership and Compensation

The Health Science Center owns all intellectual property, has an exclusive educational and commercial ownership and license authority. The faculty or staff member is not entitled to payment of royalty.

Category V– Faculty Member Uses Own Work as Part of Course Offering at UNTHSC

Description of Individual and Health Science Center Contribution:

The faculty member is using a work that he/she created as part of teaching at UNTHSC.

Examples:

1. See Category II, Example 1 above. In this case, the faculty member might offer the course at UNTHSC. The Health Science Center would pay the previously negotiated fee to Digital, Inc. for access to the course materials, but this payment would not include compensation to the faculty member beyond the standard course compensation.
2. See Category III, Example 2 above. In this case, the faculty member might teach the course to students in the program. There would be no compensation to the faculty member beyond the standard compensation for teaching the course. If the Health Science Center used the materials with another faculty member, the faculty member who designed the materials would be compensated on a per student basis as negotiated with the Health Science Center.

Ownership and Compensation

Ownership will be determined by categories one through four. There will be no extra compensation beyond normal teaching compensation for use of the work.