

Texas Tech University

Distance Learning Course Materials Policy

Creation, Use, Ownership, Royalties, Revision and Distribution of Distance Learning Course Materials

1. Introduction

This policy addresses the usage of and rights associated with distance learning course materials developed in the Texas Tech University System (TTUS). Distance learning course materials are materials used to teach students at sites either distant from or on the faculty member's university campus. The purpose of this document is to protect the rights of both the faculty member and the TTUS and to encourage the offering of quality distance learning course materials. 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 distance learning course materials, is addressed under the ownership and compensation heading in each of the four categories specified in section 5. Distance learning course materials have been a part of the curriculum in the TTUS, but for a variety of reasons, there are still many questions about the rights and responsibilities of TTUS and its faculty members with respect to these materials. Since the demand for distance learning course materials appears to be increasing and the continuing development of these course materials in various media seems likely, it is important to address the issues raised by the creation, use, and distribution of various forms of these course materials and clarify the rights and responsibilities of each of the parties involved. This policy is a supplement to the TTUS intellectual properties policy and addresses only electronic course materials. To the extent this policy conflicts with the TTUS intellectual properties policy on issues involving distance learning course materials, this policy prevails.

2. Issues Addressed

- Who owns copyright in distance learning course materials and how should such rights be protected?
- What are the rights of authors, others, and TTUS with regard to the continuing use of distance learning course materials?
- Who may receive royalties from the sale or licensing of distance learning course materials?

3. Definitions

- a. Distance Learning - Instruction in which the majority of the instruction occurs when the student and instructor are not in the same physical setting. A class is considered a distance education class if students receive more than one-half of the instruction at a distance. Distance education can be delivered synchronously or asynchronously to any single or multiple location(s):
 - (1) Other than the "main campus" of a senior institution (or "on-campus"), where the primary office of the chief executive officer of the campus is located; and
 - (2) Via instructional telecommunications to any other distance location, including electronic delivery of all types. ***Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter E, Rule §4.103**

- b. Significant Resources – Resources provided to authors by TTUS above and beyond those that are normally provided within the author’s academic department or TTUS unit. Examples include student assistants, workload release time, graduate assistants, equipment, TTUS facilities, and staff time beyond those that are normally available to an author.
- c. Outside Employment/Consulting – Defined by TTU OP 32.07
- d. Course Materials – All copyrightable materials developed for the purposes of distance learning including printed materials, CD-ROMs, videos, movies, and web sites.
- e. Authors – (1) one that originates or creates; (2) the writer of a literary work (Merriam – Webster) who is currently employed or was employed by TTUS at the time of origination or creation.
- f. Educational License – License granted to produce, sell, or distribute the work for education purposes only.
- g. Commercial License – License granted to produce, sell, or distribute the work for commercial purposes.
- h. Non-exclusive License – Authors have the right to create multiple licenses.
- i. TTUS Intellectual Properties Policy – Chapter 10, *Regents’ Rules*, Intellectual Property Rights, and Texas Tech University OP 74.04.
- j. TTUS – Texas Tech University System as defined by its Board of Regents.
- k. Director – Director of Technology Commercialization.

4. General Guidelines

a. Copyright Ownership

The TTUS Intellectual Property Rights policy recognizes that in most instances authors own copyright in scholarly works created by them. Authors thus normally own copyrights in electronically published materials they create on their own initiative. This policy also recognizes ownership of copyright in works created under contract or as works for hire as residing with the university.

Distance learning course materials created by authors for whom the TTUS provides significant resources will be jointly owned by the authors and the TTUS. 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. Authors should note that ownership of works of students is controlled by copyright law and the TTUS intellectual property policy under which students own copyright in their works and authors must obtain permission to incorporate student work in their work. Specific examples of ownership rights are presented in section 5 below.

Ownership of distance learning course materials developed in the course of or resulting from a grant or contract with governments or their agencies or other entity shall be determined in

accordance with the terms of the grant or contract. In the absence of such grant or contract terms, ownership shall reside with the authors.

b. Revision Rights

Authors should normally retain the right to update, edit, or otherwise revise electronically developed course materials that become out of date, or, in certain circumstances, should place a time limit upon the use of electronically developed course materials that are particularly time sensitive, regardless of who owns the copyright in the distance learning course materials. These rights and limitations should be negotiated in advance of the creation of the distance learning course materials and should be reduced to writing. Absent a written agreement, authors will have the right and professional obligation to review and revise work as necessary in order to maintain academic standards. If an author does choose to revise the work and such revision is done in a satisfactory manner, the author retains the rights to full royalties as discussed below. If the TTUS believes a revision is necessary and no timely revision is made or if the revision made, in the TTUS's opinion, does not maintain academic standards, the TTUS may refuse to market the product. The TTUS may also then employ another person to update the work and charge the cost of updating the author's portion of the work against any royalties paid to the author.

c. Royalties

In accordance with the TTUS intellectual property policy, authors shall receive all royalties that may accrue from the commercialization of electronically published course materials they create on their own initiative. On the other hand, the TTUS retains all royalties that may accrue from the commercialization of electronically published course materials created by authors pursuant to contract or as a work for hire. Other circumstances require review on a case-by-case basis (such as the creation of distance learning course materials initiated by an author, but using significant TTUS resources and works in progress upon employment termination of one or more of the participants). Absent a contract specifying to the contrary, specific division of royalties between the owners shall follow the examples in section 5 below. In instances of joint authorship where the TTUS also retains rights to royalties, the authors shall determine by written document the division of the authors' share of the royalties. Absent a written document of authors' division of royalties, the authors shall divide their share pro rata. In those situations where the TTUS contracts with the author(s) for royalties, those royalties are to be paid to the author(s) semi-annually. When one or more of the joint authors are employed by another university or entity, appropriate contracts will need to be negotiated between the TTUS, other entity, and the authors.

d. Contributed Materials

Liabilities may be incurred with respect to the inclusion of materials in electronically published course materials other than materials created by the author of the distance learning course materials and inclusion of voices or images of persons in the electronically developed course materials, including audience members and guest lecturers. It is the policy of the TTUS that all faculty and staff comply with the law, including copyright and privacy laws; therefore, it is the responsibility of the creator of distance learning course materials (normally the author) to obtain all permissions and releases necessary to avoid infringing copyright or invading the personal rights of others. Guidelines for the use of student works are available in the TTUS intellectual properties policy.

e. Use of University's and Author's Name

Authors must observe the same requirements that apply in other contexts with respect to the use of Texas Tech University's name. These requirements are presented in TTU OP 01.06. Use of the author's name in ways outside customary practice shall be negotiated with the author.

f. Copyright Registration

The TTUS will determine whether to register the copyright and will be responsible for enforcement of works they wholly own as in section 5.d below. Authors will make such decisions and take such steps to protect works they wholly own as in section 5.a below. Any one of the authors, including TTUS as a corporate author, of a joint work may register and enforce the copyright in the names of all owners, with accounting.

g. Retention of Non-exclusive License by TTUS

Except in section 5.a below, the TTUS shall retain a non-exclusive educational license to reproduce and use the electronically developed course materials in teaching TTUS classes on or off campus. Compensation to the faculty member for use of the course shall be as specified below.

h. Retention of Non-exclusive License by Author(s)

In section 5.d below, an author(s) shall retain a royalty-free non-exclusive educational license to:

- Reproduce and use the electronically developed course materials in teaching classes on- or off-campus at another institution;
- Develop course materials in teaching classes on- or off-campus at another institution; and
- Develop derivative materials following termination of employment with Texas Tech University.

This license shall extend for ten years from the date of termination of employment.

i. Administration

The managing director of Technology Commercialization, together with other TTUS personnel designated to manage this policy, shall be responsible for the administration of this policy and applying the policy equitably across the campus. Authors should first meet with their department chair, dean, and other supervisors to determine to which category the electronically published materials will be assigned and the ownership, institutional resource commitment, and the royalties. A copy of the agreement will be forwarded to the Office of Technology Commercialization for review and assurance that the policy is being applied in an equitable manner. The director of Technology Commercialization shall inform the dean, department chair, and other supervisors of any inequitable applications of the policy and it shall be the responsibility of the dean, department chair, and other supervisors to resolve the issue with the faculty member.

j. Grievance Procedures

(1) Foreword

The university operates under a philosophy that emphasizes the importance of ensuring the rights of its faculty, staff, and students. Both personnel and operating policies are formulated in order to assist administrators in working harmoniously with faculty, staff, and students toward the collective goals and objectives set forth by the Board of Regents. When a situation arises that results in a grievance by a faculty or staff member or a student, efforts will be made to determine the facts surrounding that grievance and to respond appropriately and justly.

The purpose of these procedures is to address grievances of faculty members related to the actions or decisions of the director and to provide a mechanism for resolving them.

Whenever possible, problems should be solved at the administrative level at which they arise. However, each member of the Texas Tech University faculty shall have the right to a hearing and an appeal for redress of grievance through established channels. Access to these channels is restricted to university employees and students or those who were employees or students when the action or inaction leading to the grievance occurred.

In conformance with Article 5154C, Sec. 6, Vernon's Annotated Civil Statutes, a faculty member has the right to present grievances individually or through a representative who does not claim the right to strike.

A faculty member holding an administrative position will have access to these procedures with regard to faculty duties, but will not have access to the procedures with regard to administrative duties.

After the grievance is presented, the time periods for action prescribed in these procedures should be followed unless reasonable extension is required by unusual circumstances or because a deadline occurs between semesters or in summer, when relevant persons are away for extended periods. In the absence of the foregoing conditions, times for action should be extended only for university holidays or by mutual agreement of the parties and, in an appeal, with concurrence of the Grievance Committee.

(2) Grievance Initiation and Hearing

(a) The grievant will present a written description of the grievance and proposed resolution to the director. The grievance will be presented within 21 calendar days after the grievant becomes aware of the action constituting the grievance. The grievant and director will meet within 21 calendar days of receipt by the director, and the director's written decision on the grievance will be provided to the grievant within ten calendar days after the meeting is concluded. If the decision is not acceptable or if the director does not render a written decision within ten calendar days, the grievant may appeal following the procedures below.

(b) The grievant or the director may request mediation of the grievance within ten calendar days of receipt by the director. If both parties agree, a person acceptable to

both parties will mediate the grievance. If the parties are unable to agree upon a mediator within ten calendar days of the agreement to mediate, the chancellor or his delegate will select a mediator qualified under Section 154.052 of the Texas Civil Practice and Remedies Code. The grievance will be presented for mediation within 21 calendar days after the mediator has been selected.

If mediation fails to resolve the grievance, the director will provide a written decision to the grievant within ten calendar days after the mediation is concluded. If the decision is not acceptable to the grievant, the grievant may appeal as set out below.

(3) Appeal to the Chancellor

- (a) The appeal procedure is initiated by the grievant providing a written request to the chancellor asking that the decision of the director be reviewed. The grievant will provide copies of the original grievance, written decisions, and a proposed resolution to the chancellor. The appeal will be filed within 15 calendar days of the grievant's receipt, or lack thereof, of the written administrative decision to which the grievant objects.
- (b) The chancellor will solicit a recommendation that will resolve the grievance from a Grievance Committee composed of five persons, which will be chosen within 15 calendar days of receipt of the appeal by the chancellor.

If the grievant is a member of the faculty of Texas Tech University, the Texas Tech University Faculty Senate shall select twelve members of the faculty whose names shall form the pool from which the Grievance Committee is formed. Members will be chosen by lot from the pool by the president of Texas Tech University or his/her representative.

If the grievant is a member of the Texas Tech University staff, the Texas Tech University Staff Senate shall select twelve members of the staff whose names shall form the pool from which the Grievance Committee is formed. Members will be chosen by lot from the pool by the president of Texas Tech University or his/her representative.

If the grievant is employed by or affiliated with Texas Tech University in a capacity other than as a staff member or faculty member, the Grievance Committee membership shall be selected according to the process for selection in the case of a faculty member of Texas Tech University.

Persons drawn for service on the committee will be allowed to present reasons to the chancellor why a recusal should be granted. After these determinations are made, the names of the remaining individuals will be presented to the parties. Each party to the dispute may challenge not more than two persons selected for the committee. After challenges by all parties, the first five names will comprise the Grievance Committee.

The chancellor or his/her representative will then convene the committee, give the committee its charge, assist the committee in identifying the parties to be involved in the process, provide it with guidelines to afford the parties due process, and

provide a copy of the grievance and all supporting documentation to each committee member.

- (c) At the request of the Grievance Committee, the chancellor may appoint a faculty member with expertise in intellectual property to serve as a non-voting facilitator to provide the Grievance Committee with background information only.

(4) Grievance Committee Hearing

- (a) Upon receipt of a request from the chancellor, the Grievance Committee will schedule a hearing. This hearing must be held within 21 calendar days after receipt of the request from the chancellor. The Grievance Committee will elect its own chairperson. The chairperson's notice, scheduling a time and place for the hearing, must be delivered to the parties involved seven calendar days prior to the hearing. These time limits are guidelines and may be changed for university holidays and by mutual written agreement of the Grievance Committee and the parties to the grievance.
- (b) The formal hearing will be conducted in accordance with procedures established by the Grievance Committee. The grievant or his/her representative(s) or counsel will present the case of the grievant. The grievant has the right to present information, written or oral, considered relevant or material to the grievance, including the calling of witnesses. This information may be presented in written or oral form.

After the presentation by the grievant, the director's case will be presented under the same rules as those that were applied for the grievant. The director may be represented in the process as well. The Grievance Committee may call witnesses, as it considers appropriate. The grievant and the director may question all witnesses.

- (c) Evidence considered in the hearing must relate to the grievance. After all evidence is received, the Grievance Committee will meet and consider the case. The opinion held by the majority of the members will constitute the committee's recommendations. The committee must provide its recommendations in writing to the chancellor, with copies to the parties to the grievance, within 15 calendar days after the hearing is concluded. Minority opinions of the committee may also be submitted to the chancellor. Recommendations to the chancellor are advisory in nature.
- (d) If the Grievance Committee has requested and the chancellor has appointed a non-voting faculty member facilitator as permitted by subsection (3)(c) above, the faculty member facilitator may attend the hearing at the request of the committee. The faculty member facilitator shall not be permitted to be present during the committee's deliberations.

(5) Chancellor's Decision

The chancellor will send a written decision, with copies to the Grievance Committee and parties to the grievance, within 15 calendar days of receipt of the Grievance Committee's recommendations. The chancellor's decision is the final decision on the grievance. No further appeal is allowed.

(6) Resolution by the Parties

The parties may agree to a resolution of the grievance at any time from initiation of the grievance procedures until the chancellor's final decision.

5. Specific Categories Assigning Ownership and Royalties

Note: Authors should meet with their department chair, dean, or supervisor prior to creating electronically developed course materials for distance learning in order to reach an agreement as to the appropriate category classification. It is understood that, in some circumstances, this category classification may change based on a modification in TTUS's support for the project. Any such modifications should be negotiated between the director and the author and reduced to writing.

a. Category A – Totally Author Generated

Description of Individual and TTUS Contribution:

The work resulted from an individual's efforts on his/her own personal time without any direct support from or through the TTUS and without the use of any TTUS resources beyond those normally provided through the author's department or unit.

Examples:

- A faculty member 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. TTUS's licensed development software that is available throughout the department is also used. The course is mounted on a commercial server.
- Two professors are approached by the publishing arm of a learned society to create a CD containing 2,000 images that they have photographed in preparing for classes over the years. The professors took the photographs on weekends using their own camera and film, but on the department's copy stand. The learned society creates and markets the CD.

Ownership and Compensation:

The individual authors own all intellectual property, may receive compensation for their work, and retain all distribution rights.

b. Category B– Minimal University Resources

Description of Individual and TTUS Contribution:

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

Examples:

- An author works with Digital Inc., a Web course publishing company, to put a course totally on the Web. The TTUS provides funds to purchase time from a TTUS unit to videotape two hours of lecture to be streamed as part of the course. In addition, the TTUS provides the author one of two digital recording workstations for a period of two weeks. Digital Inc. spends over 300 hours recording materials provided by the author and creating the Web course, and mounts the course on their server. The author works on the project almost exclusively on his/her own time.

The author uses the work that he/she created as part of teaching at TTUS. The TTUS would pay the previously negotiated fee to Digital, Inc. for access to the course materials, but this payment would not include compensation to the author beyond the standard course compensation.

- An adjunct faculty member who teaches for the TTUS volunteers to put half of his/her course on the Web. The TTUS provides 30 hours of training on WebCT, the Web platform utilized. The TTUS also provides twenty hours of assistance in creating a Power Point presentation to be used as part of this course. The adjunct faculty member spends 200 hours creating this course on his/her own time. The course is mounted on a TTUS server.

Ownership and Compensation:

The individual owns the intellectual property and has the right to distribute the work. The individual may receive compensation for any distribution outside of TTUS's course delivery. The TTUS has a non-exclusive educational license to use the work as part of TTUS's course delivery. In such case, the author will be compensated per student enrolled in a TTUS course, at a negotiated rate or as otherwise agreed to by the TTUS and the individual, when faculty, other than the author, use these materials to teach the course.

c. Category C– Substantial University Resources Are Provided

Description of Individual and TTUS Contribution:

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

Examples:

- A faculty member volunteers to make one of his/her department's courses totally available on the Web. The faculty member is released from one course in the spring semester and paid for a course in the summer to develop the product, but also contributes some of his/her own time. The TTUS provides a substantial grant to purchase a digital camera to use in the project or a 0.5 FTE Web developer for a semester to work with the faculty member. Personnel from a TTUS unit record speakers for the class and digitize the recorded audio and video. This unit's work consists of over 300 clock hours of production and support services. The course is mounted on a TTUS server.
- A TTUS graduate program decides to offer a degree by taping courses and allowing employees of two corporations to download the courses to view on their own schedules.

Three faculty from this program will rotate grading and answering questions for each course. One of these faculty members volunteers to offer the first course. During the next year, this faculty member is given release from one course each semester and is paid for two courses in the summer. The TTUS funds production time for the production of the tapes. The TTUS also contributes significant hours in digitizing the tapes. The faculty member spends 60 hours over the year of his/her own time designing the course for television delivery. The TTUS mounts the course on its servers.

The author is using this work as part of teaching at TTUS. In this case, the author might teach the course to students in the program. There would be no compensation to the author beyond the standard compensation for teaching the course. If the TTUS used the materials with another faculty member, the author who designed the materials would be compensated on a per student basis, as negotiated with the TTUS.

Ownership and Compensation:

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

d. Category D– Work Made For Hire – TTUS Assigns Duty to an Author to Develop a Work

Description of Individual and TTUS Contribution:

A TTUS employee was contracted to develop a specific product. The TTUS provided all resources for the work. The work was carried out totally as a part of the employee's assigned time.

Example:

- The chair of a department assigns a faculty member to a course that will be videotaped and broadcasted the next year to sites in five school districts as part of a new master's program offered by the department. A faculty member is given course releases for the fall and spring semesters and is given extra compensation during the fall and spring, in addition to a work-for-hire payment during the summer. All of the design and production work is done during working hours. The faculty member is assigned a 0.5 FTE research assistant for the academic year to support the development of the course. The TTUS contributes 250 hours in the design and production of the videotapes.

Ownership and Compensation:

The Texas Tech University System owns all intellectual property, has exclusive educational and commercial ownership, and has exclusive license authority. The faculty or staff member is not entitled to payment of royalty.

6. Author's Affiliation with TTUS is Terminated

Ownership and royalties will continue as determined by this policy at the time of the termination. The TTUS will be granted a non-exclusive educational license and will continue to use the materials for educational purposes as it sees fit (see 4.g above). Access to TTUS servers and resources will be denied to the author upon termination and the author will be provided an electronic copy of the distance learning materials.