

MONTANA BOARD OF REGENTS OF HIGHER EDUCATION
Policy and Procedures Manual

SUBJECT: RESEARCH AND PUBLIC SERVICE
Policy 406 – Ownership of Electronic Course Material
Adopted: March 23, 2001; Revised: September 19, 2013

Board Policy:

A. General Policy and Coverage

1. Any electronic course materials created or developed by employees of the Montana university system (MUS), shall remain the property of the creator except in the following cases, which shall make the electronic course materials the property of the Montana University System:
 - a. The production of such materials is part of a sponsored program; or
 - b. Substantial institutional resources were used in creating such educational material. "Substantial institutional resources" includes but is not limited to provision of staff time, equipment funds, released time from assigned duties, or an allocation of resources not normally available to all faculty. Academic year salary, office, usual library resources, usual secretarial and administrative staff resources or usual computer equipment, among other things, are not regarded as constituting "substantial use of institutional resources".
2. This policy applies to electronic course material whether or not it was, is or may be eligible for copyright or patent. However, faculty who develop electronic course material that is considered property of the MUS shall assist the MUS to secure and protect a patent or copyright on the material if such protection is sought by the MUS.
3. The mere communication or preservation of traditional classroom or course material in an electronic medium does not bring that material within the ambit of this policy. Rather, this policy is intended to cover material created for or designed to be used in conjunction with a course, or a part thereof, delivered by means other than personal, face to face interaction between the instructor and the student.
4. Activities and materials covered by this policy are thereby excluded from the coverage of policy 401.2 (patent) and policy 401.3 (copyright).

B. Procedures Applicable to Electronic Course Material Considered Property of the MUS

1. Division of Income
 - a. Generally, net income shall be divided, 50 percent to the employee and 50 percent to the campus at which the developer is employed. However, a campus shall retain 100% of the net income from electronic course material developed by an employee at the express direction of the employer or in return for specified payments or other consideration.
 - b. Net income, for the purposes of this policy, means gross income minus costs of development and promotion, realized from the sale or licensing of the electronic course material.
2. Variance by Contract
 - a. This policy may be varied by a written contract. Such contracts may be between the MUS and the employee or they may also involve an outside sponsor that desires to maintain certain rights in materials it is paying the MUS employee to develop.
 - b. A campus chancellor or a president may approve a contract that either reduces the MUS ownership rights or reduces the MUS share of net income if, in the chancellor or president's judgment, the contract is in the best interests of the MUS. In each such instance where the MUS ownership rights are reduced or the MUS share of net income is reduced to below 50%, the chancellor or president shall inform the commissioner of the contract and shall indicate the reason for approving it.
3. Relinquishment of University Rights
 - a. The MUS may for fair value and upon the approval of a chancellor or president relinquish rights to electronic course material to the developer or any other person or entity. Such a right may be relinquished for no consideration only if the president or chancellor concludes that there is not a likelihood of the campus benefiting from the retention of the right in question.

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- b.. Any agreement relinquishing such rights shall retain for the MUS a perpetual, royalty free right to use, reproduce, and revise without restriction the material for the MUS own educational or research purposes, unless the president or chancellor concludes that such a clause is not in the campus's best interests and documents that conclusion in writing.
- 4. Limitation on Use Outside the MUS
 - a. The employee who creates or develops the electronic course material subject to this policy may not use the material in conjunction with teaching conducted on behalf of any entity other than the MUS unless prior permission is granted in writing by the a campus chancellor, president or the commissioner of higher education, which permission shall not be unreasonably withheld.
 - b. This limitation applies to the specific electronic format of the course and does not limit the employee's right to use facts, theories, opinions or other items of substantive course content in another setting.

History:

Board of Regents Policy and Procedures Manual: Ownership of Electronic Course Material (Proposed New Policy), approved by the Board on March 23, 2001 (Item 109-103-R1100). Revised September 19, 2013, Item 160-102-R0913.