

 <p>DALHOUSIE UNIVERSITY FACULTY OF HEALTH</p> <p>Information Sheet on Copyright Related to Educational Products</p>	<p><i>Policy Sponsor:</i> Dean</p>	<p><i>Approval Date:</i> May 8, 2000</p>
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Preamble, Definitions, and Relevant Articles

This document is intended to inform members of the Faculty of Health community about copyright issues related to educational products, i.e. the products of work related to teaching. The purpose of this document is to explain existing policies and clarify complex areas, not to diverge from the current Collective Agreements. For the purpose of this document, copyright is defined as the right to ownership of any intellectual creation, in any work or portion of work protected under the law by the Canadian Copyright Act. According to the Canadian Intellectual Property Office:

A copyright – the right to copy – means that an owner is the only person who may copy his or her work or permit someone else to do so. Generally, copyright in Canada lasts for the life of the author and 50 years following the author’s death.

In addition to copyright, authors and creators have “moral rights”, that is:

Rights an author retains over the integrity of a work and the right to be named as its author even after sale or transfer of the copyright (Industry Canada 1997).

Generally, there are two major owners of copyright, the creators of a work, and another party, if the original owner has transferred rights. A third owner of copyright is an employer if the work was created in the course of employment unless there is an agreement to the contrary. An employer is defined here as “one that hires others to perform a service or engage in an activity in exchange for compensation” while an employee is defined here as “a person usually below the executive level who is hired by another to perform a service especially for wages or salary and is under the other’s control” (Merriam-Webster’s Dictionary of Law 1996). A fourth owner of copyright is person who commissions a work unless there is an agreement to the contrary.

At Dalhousie University, DFA members have been assigned their copyright to works created by them. Article 23.01 of the Collective Agreement (1997-2001) states that:

Except as dealt with in Clauses 23.05 and 23.06, the Board makes no claim to the copyrights in books, articles and similar material in the print media written or prepared by any Member. The Board makes no claim to the copyright of any work of art, such as painting, sculpture, music or the like, created by any Member. The Board, therefore, undertakes to transfer to those Members who are the authors, and hereby transfers to those Members who are the authors, the copyrights of all material they have created in the print media and in works of art.

This also applies to computer programs (23.02), lecture (23.03), film, videotape and audio recording (23.04).

Exceptions are stated in Articles 23.05a and 23.06a/b:

A Member whose workload includes editing a journal or magazine published by Dalhousie University shall not own any copyrights therein save and except for articles, reviews or literary pieces written by the Member (23.05a).

Members agree to waive any claim for monetary compensation arising out of copyright claims in relation to teaching manuals produced internally within the University as part of their workload, provided that such manuals are sold only within the University at a price set to recover direct costs (i.e., paper, bindings, salaries of support staff, and duplicating costs, but not honoraria or similar payments) or less. If the Board sells at a price higher than direct costs or sells to the general public, then the Board shall pay to the Member(s) who holds the copyright in the teaching manual a ten percent (10%) royalty on all such sales (23.06a).

If the Member agrees in writing that his or her workload as specified in Article 20 shall include the production, without any direct funding other than salary, of a recorded work, textbook, printed lectures, laboratory notes or other teaching materials, except for teaching manuals as provided in Clause 23.06(a), the Board may use such materials in its educational Programmes. This right shall cease five years after the termination of employment by the Member. However, the Board may arrange for continued use of the material upon payment of an appropriate royalty or fee (23.06b).

Although ownership of copyright for DFA members is clear, for non-DFA members, such as contract faculty, employed students, staff, and other employees of the University, all copyright for material produced in the course of employment rests with Dalhousie University. This policy is consistent with the Canadian Copyright Act.

Designation of Copyright and Authorship

Any valid copyright is recorded only on the front page or on the first contact item a user of the product may encounter. Copyright is indicated by the symbol “©,” username or owner name and year. It is unnecessary to include this symbol on every component of the product.

Authorship and contributions of individuals should always be acknowledged even if these individuals do not own copyright.

Examples:

Title Prepared by XYZ	Title Author School of XYZ With acknowledgments of contributions by X in preparation of this manual
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Purpose of this Document

It is, therefore, the purpose of this document to clarify copyright and copyright issues as they relate to educational products produced for the Faculty of Health. The document also provides model contracts that may be used, where appropriate.

It is possible that the copyright of an educational product is vested in different authors and among copyright holders who differ from authors. For example, the product may have one creator of a photograph who does not hold copyright to that photograph, e.g., university photographer. To complicate matters further, each author and each copyright holder may only own parts of authorship or parts of copyright in an educational product. It is, therefore, imperative to determine clearly who owns what and who has what rights. Many of the scenarios that follow attempt to clarify situations related to copyright ownership and transfer. The following areas are described:

- 1) DFA members wishing to assign copyright
- 2) Modifications of copyrighted products
- 3) Copyright not claimed
- 4) Shared copyright
- 5) Contractual obligations and copyright
- 6) Educational products from Venture Development Initiatives
- 7) Dispute resolution
- 8) Contact information for individuals wishing to consult further

DFA members wishing to assign copyright

A DFA member who:

- has made genuine intellectual contributions, and
- who owns copyright or partially owns copyright

can assign copyright on her or his portion of a copyright to another individual. Copyright can be assigned to someone who owns a portion of the copyright, i.e, another faculty member or Dalhousie. Copyright can also be assigned to an individual who is directly employed by the DFA member, i.e., no funds from Dalhousie University are used to compensate the individual, and the DFA member chooses to assign copyright.

1. Modifications of Copyrighted Products

Educational products in which copyright is owned by a DFA member can only be modified under the following conditions:

- a) The DFA member agrees to have modifications made by others to the copyrighted product;
- b) Dalhousie University is assigned copyright by way of a written agreement;
- c) The DFA member makes all changes to a product and thereby maintains ownership of copyright in the original work and its modifications;
- d) If a DFA member owns copyright in portions of the educational product, other portions can be modified;
- e) If other portions are modified, then an agreement must be signed with those persons who create the modifications to the work and, consequently, will have copyright in the modifications made, as appropriate.

2. Copyright not claimed

The Faculty of Health uses a majority of educational products because no copyright has been claimed. Many such products undergo evolutionary processes over time as these products are passed among individuals over the course of their work at Dalhousie University. For example, these products may be lab manuals that were passed on and used and modified over the years or fieldwork manuals.

3. Shared copyright

A. Dalhousie University employees (either DFA or other) working with non-Dalhousie University personnel

If any work is performed by Dalhousie University employees (either DFA or other employees) in conjunction with individuals who are not employed by Dalhousie University but who have the right to copyright, the most reasonable course of action would be a negotiated written agreement prior to any work being done. An example would be a project involving hospital employees, self-employed physicians, a DFA member, and a Dalhousie administrative group member.

There are three possibilities: copyright can be shared by mutual agreement; copyright can be assigned to Dalhousie University (or elsewhere), again by mutual agreement; or copyright can be licensed to Dalhousie University or elsewhere upon mutual agreement.

Whether copyright is shared with Dalhousie University, assigned amongst rightful owners, or waived, a Copyright assignment or Waiver agreement should be signed. (Appendix 1)

When authors do not wish to assign their copyright in the materials to Dalhousie University, an alternative arrangement would be a copyright license agreement which grants to the University a royalty-free, non-exclusive, irrevocable license to use, modify and/or publish the materials in any manner that the University considers appropriate (Please consult the Copyright License agreement in Appendix 2). An extension of a license to Dalhousie University beyond the Collective Agreement can be negotiated.

Because each individual project might require different considerations and, in the event of any questions as to the proper form or contents to be used, it is advisable to direct inquiries to the Dean's Office of the Faculty of Health.

B. Copyright project collaboration between Dalhousie University and DFA members

Where Dalhousie University and DFA members engage jointly in an educational project where copyright will be at issue, there should be a signed, mutually acceptable agreement that precedes the work. Appendix 3 outlines a sample agreement.

C. Regular assistance provided by Dalhousie University to DFA

When Dalhousie University gives regular assistance to a faculty member to assist the Member to produce a product, e.g., a modest number of hours of a research assistant or modest funds to support the work, copyright remains with the faculty member within the confines of Clauses 23.05-23.06. See Appendix 3.

D. Non-regular assistance provided by Dalhousie University to DFA

When assistance provided by Dalhousie University is beyond what would be reasonably considered regular support, e.g., substantial funding provided by Dalhousie for the production of an educational product or support for the work from an expert assistant, then prior negotiation with Dalhousie University is necessary to determine what portion of the copyright the University should claim. Where units or the Dean's Office provide non-regular assistance then copyright must be clarified and licensed use by Dalhousie University must be assured prior to such support being received. See Appendix 3.

When the assistance provided by Dalhousie University consists of intellectual support, in the form of an expert or other qualified assistant who would merit creator or authorship acknowledgement, then Dalhousie University owns the copyright of the portion contributed to the product by that individual. One example would be a fieldwork coordinator holding an administrative position jointly preparing a field manual with a faculty member. See Appendix 3.

E. Complex multimedia educational products

Complex multimedia educational products, such as distance education, web-based programs or multi-media computer programs, often require extraordinary support on the part of Dalhousie for development. If such is the case, then partial or full ownership of copyright must be negotiated, before funds are committed, between a DFA member and Dalhousie University prior to product development. For anyone other than a DFA member, all complex multimedia educational products are the copyright of Dalhousie University, unless otherwise assigned in writing. See Appendix 3.

4. Contractual obligations and copyright

A. When Dalhousie University contracts for the development of an intellectual product from anyone, then the contract in Appendix 4 must be negotiated and signed before the project commences.

B. Dalhousie University can purchase copyright from an individual by way of paying a purchase price (please consult Appendix 1 for a sample agreement).

5. Educational products from venture development initiatives

A. Educational products produced as part of a venture development initiative must be the property of Dalhousie University and a necessary agreement to that effect must be executed, unless there is an agreement to the contrary subject to negotiated terms. If Dalhousie University directly pays a participant for venture work, then copyright must belong to Dalhousie University.

B. Ventures and faculty claims to copyright

Because venture development is a revenue-generating process meant to assist units, prior negotiation with a faculty member on copyright, during the early stages of venture planning, is necessary. Until copyright issues have been finalized, no involvement in products or development should commence.

6. Dispute resolution

Prior agreement on the assignment of copyright or copyright is the best mechanism of avoiding disputes. Reasonableness and fairness during dispute resolution should be used. Where disputes do arise, the parties are encouraged to consult the Dean's Office for assistance in resolving the matter.

7. Individuals wishing to consult on copyright issues

Contact the Dean's Office for further clarification at 494-3327.

Appendix 1: Copyright Assignment and Waiver Model Agreement

Copyright Assignment and Waiver

In consideration of my participation in a project entitled

(insert name of project)

Within the School/College

_____, Dalhousie University;
(insert unit name)

And in recognition that this project is a joint School/College effort funded through Dalhousie University and that others will be making contributions to the project,

NOW THEREFORE WITNESSETH that, in consideration of the sum of one dollar (\$1.00) and other good and valuable consideration,

I _____
(insert name of signing party)

hereby sell, assign and transfer to Dalhousie University, Halifax, Nova Scotia all right, title, copyright and interest that I have or shall have in Canada, the United States of America and all other countries in the world in the following work:

(insert name of the work or project and describe all documents or materials covered by this agreement)

which work was or will be created by me or to which I made or will make contributions and I also waive any or all rights I have or shall have in the said work in favour of Dalhousie University, its assignees and licensees and understand and agree that Dalhousie University may use, modify and/or publish the work or portions thereof in any manner it considers appropriate.

Signed at Halifax, N.S., this _____ day of _____, 20____

Witness

Member Signature

Appendix 2: Copyright License Model Agreement

Copyright License Agreement

I, _____,
(name)

The undersigned, in consideration of the sum of one dollar (\$1.00) and other good and valuable consideration, hereby grant to Dalhousie University, its successors and assigns, a royalty-free, non-exclusive, irrevocable license to use, modify and/or publish the following materials or portions thereof in any manner that the said Dalhousie University considers appropriate:

(Describe the materials covered by this License)

Signed at Halifax, N.S., this _____ day of _____, 20____.

Signature of Grantor

Signature of Witness

Appendix 3: Sample Agreement on the Provision of Assistance

Note that this agreement applies only to DFA members.

Agreement Between Dalhousie University on behalf of the School/College of

(Unit name)

and

(DFA Member)

We, the undersigned, agree that the assistance provided by Dalhousie University to the Member constitutes Regular/ Beyond Regular (specify which) assistance for the production or co-production of the following educational product:

If Beyond Regular assistance is provided or if that assistance is creator or authorship support, we the undersigned agree that copyright shall be shared as follows: (list percentages, or portions shared)

Signed at Halifax, N.S., this _____ day of _____, 20____.

Signature of Member

Signature of Director

Appendix 4: Sample Contractual Agreement

Agreement Between Dalhousie University and

(name of Developer)

This agreement is made this _____ day of _____, 20__

BETWEEN: Dalhousie University, a body corporate, having its offices at
Halifax, Nova Scotia (hereinafter called "Dalhousie")

OF THE FIRST PART

And _____

(name)

Of _____

(residence, Province)

(hereinafter called the "Developer")

OF THE SECOND PART

WHEREAS Dalhousie, in co-operation with

(Faculty; School/College)

Has developed a program of studies leading to a

(degree; profession)

from Dalhousie,

AND WHEREAS the contracted party (hereinafter called the "Developer") has agreed to develop specified educational materials for Dalhousie to use as it considers appropriate,

NOW THEREFORE in consideration of the mutual covenants contained herein and subject to the terms and conditions of this Agreement, the parties agree as follows:

1. The Developer agrees to write and compile appropriate educational materials for Dalhousie in accordance with the terms of this agreement. Said educational materials (hereinafter called the "Work") shall be prepared in accordance with the specifications contained in Appendix A of this document.
2. Dalhousie agrees to pay the Developer according to the schedule outlined in Appendix B of this document.

It is understood and agreed that if the Developer is unable or unwilling to complete the preparation of the Work within the time specified hereunder, and according to the specification outlined in Appendix B, then all amounts paid by Dalhousie to the Developer shall be returned by the Developer to Dalhousie.

3. The Developer shall prepare the Work in accordance with the directions as may be given from time to time by Dalhousie. It is understood and agreed that the educational materials are to be appropriate for use in the specified program(s) at Dalhousie which is part of the above named degree program, and that it will be consistent with the curriculum established for such a program by the FHP or unit administration. The Work shall be deemed satisfactory to Dalhousie unless Dalhousie informs the Developer in writing of the specific content unsatisfactory to Dalhousie within thirty (30) days. The Developer shall make and submit within thirty (30) days of receipt of such notice such changes as the Developer believes are reasonably required. If the changes are not satisfactory to Dalhousie, or no changes are submitted, then Dalhousie may make changes to the Work, as it considers appropriate and/or necessary. All work shall be provided to Dalhousie in printed form and in electronic form in an IBM compatible computer format.
4. It is understood and/or agreed that the Work is subject to the final review and approval of the appropriate program committee(s) and the Faculty of Graduate Studies at Dalhousie if relevant.
5. It is understood and agreed that ownership of the Work resides in Dalhousie and the Developer agrees to make no claim to the ownership or copyright in the Work. The owner hereby transfers to Dalhousie all interest, property and copyright that the Developer has or might acquire at any future time in the Work.
6. Dalhousie agrees to the contribution of the Developer to the Work and agrees to give a written acknowledgment of such contribution in any printed copies of the Work. It is

understood and agreed that Dalhousie may, in its sole discretion, decide not to publish the Work.

7. The Developer warrants that the Work will be original, and that it has not been previously published in whole or in part without appropriate copyright clearance, and will not be submitted by the Developer to any other party. The Developer's obligations under this Agreement are not assignable.
8. The Developer warrants that the Work, when published, will not infringe upon or violate any copyright or the right to privacy, or constitute a libel or slander against or violate any common law rights or any person, firm or corporation.
9. The Developer agrees to indemnify Dalhousie from any loss, liability, judgment, cost or expense of any kind, or character suffered or incurred by Dalhousie by reason of any breach, or alleged breach by the Developer, of any term or condition of this Agreement.
10. Dalhousie agrees to indemnify the Developer, from any loss, liability, judgment, cost or expense of any kind suffered or incurred by the Developer by reason of any breach, or alleged breach by the Dalhousie, of any term or condition of this Agreement.
11. It is understood and agreed that Dalhousie shall be free to update and revise the Work at any time. Dalhousie shall be free to proceed with such updating and/or revision as it considers appropriate using any other party that is considered acceptable to Dalhousie. If a person other than the Developer does any such updating or revisions, the Developer retains the right to review the changes and to remove her/his name from the published Work.

It is understood and agreed that Dalhousie may use the Work in such a manner as it considers appropriate.

12. Unless otherwise agreed to, any materials to be used in the Work including photographs, drawings, maps, tables, charts, illustrations and/or any other materials that are not written by the Developer shall be provided and paid for by the Developer and shall be in the form which is suitable for printing by Dalhousie.

DALHOUSIE UNIVERSITY

(Witness)

Per: _____

(Witness)

Developer: _____

Appendix A: Outline of educational materials to be provided and their dates of delivery

Faculty of Health, Program Name

Course Title: _____

1. Develop a detailed course ready for both on-site and distance delivery.

The course must include:

- A. A course overview and objectives explaining the need for the course and its scope.
- B. The text, readings, other instructional materials and links to be used in the course.
- C. The sequence and grouping of the modules in the course.
- D. Learning objectives for each module and educational methods used.
- E. A brief introduction and summary of each module explaining how it fits with the course and linking it to previously covered materials to illustrate a logical progression of instruction.
- F. Comprehensive content for each module.
- G. A marking scheme for the course and evaluation. Evaluation assignments and examinations to be included.

Appendix B: Course Delivery and Payment Schedule

Dalhousie University, Faculty of Health, will compensate the Writer in the amount of \$ _____ for a complete set of course materials suitable for both on-site and distance education delivery that constitutes the agreed upon course. Upon approval by the Steering Committee of a detailed course outline, the Faculty of Health Professions will accept an invoice from the Writer for \$ _____. The Faculty of Health Professions will accept an invoice for the remaining amount of \$ _____ subject to final approval by Faculty Council of the Faculty of Health Professions of all course materials as specified in the contract. These course materials are to be delivered according to the following schedule.

Start Date:

First Draft:

Feedback to Writer:

Final Draft: