

Intellectual Property Rights in E-Learning Materials

NB: With effect from 7 January 2017, this document ceased to be an agreed Collective Agreement between the university and the recognised academic union (UCU), however, as it was an incorporated (contractual) agreement it remains effective for academic employees on the single pay spine who commenced employment with the university before 7 January 2017.

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Collective Agreement

Intellectual Property Rights in E-Learning Materials

De Montfort University has, through consultation, reached agreement with NATFHE and AUT to use the Clauses within this Collective Agreement in conjunction with the Contract of Employment. The Clauses are not intended to be used in isolation, or in any way other than as an adjunct to the Contract of Employment.

Definitions

1. 'E-Learning Materials' means any materials created solely by you in the course of your employment within the University or created on behalf of the University that are primarily intended (whether by the University or by some third party) to be used in digital form by students at any level, for the purposes of any course of study those students are following.
2. 'IPR' means patents, trademarks, trade names, design rights, copyright, confidential information, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which shall subsist anywhere in the world.

Primary Obligation

3. The University and you foresee that you may make or discover or create IPR in the course of your duties and agree that in this respect you have a duty to further the interests of the University.

Title to Rights

4. Subject to the provisions of the Patents Act 1977, the Registered Designs Act 1949 and the Copyright, Designs and Patents Act 1988 all IPR in the e-Learning Materials arising out of the performance of your duties under this Agreement shall be the property of the University, and you undertake to do all acts and things as may be thought by the University necessary to vest any such IPR in the University and to register title in such property in the University.
5. In the event that you fail (for whatever reason) within 30 days of a demand by the University to do all acts and things effectively to vest any such IPR in the University, you hereby authorise the University in your name and on your behalf to execute all such deeds or documents as may be necessary or desirable to transfer such IPR in the e-Learning Materials to the University and register title in the e-Learning Materials in the University.
6. If material originating from third parties is included in the e-Learning Materials created by you or jointly with others you shall identify such material to the University and shall obtain all necessary written permissions from the owners or from any rights organisation authorised by the owner to grant such permissions in respect of such material. Alternatively you shall, if the University so agrees, provide the University with sufficient information to enable the University to obtain such permissions, but the University shall not thereby be obliged to secure such permissions and may require that you remove any such material from the e-Learning Materials.

7. The University hereby agrees and acknowledges that all performers' rights in any video or other recording of your own lectures or presentations or similar works are owned by you. You grant to the University and its authorised users an irrevocable royalty-free exclusive licence to use such material for administrative, educational, teaching and research purposes with its own staff and students together with the unrestricted right to grant sub-licences to any other educational institution for administrative, educational, teaching and research purposes.
8. By this Agreement you waive any moral right under the Copyright, Designs and Patents Act 1988, and nothing therein shall constitute an exclusive recording contract within the meaning of Part II of that Act or consent by you to the exploitation of any qualifying performance for the Purposes of that Part. During your employment with the University, the University shall respect your moral rights under the Copyrights, Designs & Patents Act (1988) as though you had not waived these rights.

Exploitation and Income

9. The University is free to exploit (whether for financial gain or not) such e-Learning Materials as it sees fit, including licensing or assigning the IPR in the e-Learning Materials to third parties, or merging said e-Learning Materials with other materials created within the University or elsewhere subject to the provisions of section 12.
10. The University will be under no obligation to inform you of any plans to exploit the e-Learning Materials (including any materials incorporating your performer's rights) for educational purposes (whether by the University or a third party) but will inform you in the event it exploits the e-Learning materials for commercial purposes ("Commercial Exploitation") which shall include use of such materials incorporating your performer's right by third parties for the benefit of students who are not registered at the University and should the Commercial Exploitation of the e-Learning materials prove to be profitable, the University agrees that it shall enter into good faith negotiations with you (within the framework of the University's IP Policy) regarding reward commensurate to the contribution made by you to the e-Learning Materials being so Commercially Exploited.
11. In the event that the University fails to engage in the Commercial Exploitation of the e-Learning Materials within three years of the e-Learning Materials being first exploited for educational purposes and where the University has no plans to exploit the material in the foreseeable future the University will enter into good faith negotiations with a view to assigning you the rights in the material.

Credits

12. The University agrees to credit you in perpetuity for any significant contribution to the e-Learning Materials and all such credits will be listed alphabetically irrespective of the significance of the contribution made. The University shall comply with any request by you in writing that your name be removed from the e-Learning Materials.
13. The University may update or amend the e-Learning Materials in line with the agreed guidelines and procedures specified in the e-Learning section of the staff handbook.

Permitted Uses

14. The University grants to you a royalty-free non-exclusive licence to use (either alone or with third parties approved by the University) the e-Learning Materials created by you or jointly with others for non-commercial teaching or research purposes only for as long as you remain employed by the University.
15. Should your contract of employment with the University terminate for any reason, you shall be entitled to enter into negotiations with the University with a view to your being permitted to make and retain a copy of the e-Learning Materials for your use for non-commercial teaching and research purposes only. Such permission would not normally be withheld. In deciding whether or not to permit you to use the e-Learning Materials (which shall be at the sole discretion of the University) the University shall have regard to the prevailing circumstances which may include any significant effect the granting of such permission might be expected to have on the University's competitive position, the University's future plans for Commercial Exploitation and the circumstances leading to your leaving the University's employment. For the avoidance of any doubt, neither you nor your new employer shall be permitted to Commercially Exploit the e-Learning Materials without the express written consent of the University.
16. Nothing herein shall grant to you any right or licence to copy or use any versions of the e-Learning Materials updated or in any way amended by the University after termination of the employment whose terms and conditions are governed by this Agreement.

Prohibited Uses

17. You are not permitted to assign or enter into any licence for the exploitation of the e-Learning Materials. In the event that you become aware of any third party wishing to exploit the e-Learning Materials such third party shall be advised by you to contact the University as the owner of the IPR in the e-Learning Materials.

Rights in Other Material

18. Save as provided hereafter, the University agrees and recognises that the IPR in Texts shall be vested in you. Texts means textbooks and academic articles and works of a similar nature other than e-Learning Materials created through your intellectual effort in the course of employment. Texts are not confined to words, but could include images or other media.
19. If Texts are to be used in e-Learning Materials, IPRs in Texts shall not be assigned or licensed by you on an exclusive basis to any third party unless provision is made for the University to use such materials for teaching and research purposes without charge.

Termination

20. Save as provided herein, all rights and obligations under this Agreement shall continue to be in force after the termination of the employment whose terms and conditions are governed by this Agreement in respect of all IPR in the e-Learning Materials originated by you during your employment under this Agreement, and shall be binding on your representatives.

Dispute Settlement

21. In the event that the University wishes to restrict the option for an individual to retain a copy of e-learning materials on departure from employment, the individual's Head of Department will write to the member of staff in a timely manner stating this. If the staff member disputes the need for this restriction they will have the right to appeal to the PVC responsible for Learning and Teaching. Any complaint by you with regard to the application of this Collective Agreement shall be dealt with in accordance with the e-learning section on the Intranet.

This document may be varied by agreement by all parties, i.e. De Montfort University, National Association of Teachers in Further and Higher Education, and the Association of University Teachers.

This agreement may be terminated by any of the three parties by giving 6 months notice in writing.

For and on behalf of De Montfort University

Signed: Date:

For and on behalf of NATFHE

Signed: Date:

For and on behalf of AUT

Signed: Date:

Collective Agreement No. 25