

# APPENDIX A

# Statement of Principle: Open Resources

In their work at the Foundation employees may produce and have access to “intellectual output” which includes both intellectual property and confidential information.

## Principles

The Foundation is committed to opening intellectual resources created or co-created by the Foundation, in Foundation projects or with Foundation funds (Foundation resources). Intellectual resources include software, project reports, manuals, research results and the like which are ready to be communicated to the public.

Foundation resources shall be open resources as far as reasonably possible. Resources are open resources when they are available for revision, translation, improvement and sharing under open licences, open standards and in open formats, free of technical protection measures.

All Agreements entered into by the Foundation which include the creation of resources shall ensure that the resources are open resources, and shall record how the Intellectual Property in the resources is owned and licensed.

The Foundation recognises that there are a number of legitimate reasons when resources may not be made open. When documents are not made open then they may, when suitable, be made available on an open access basis, which permits copying but does not allow any changes. Considerations of privacy, confidentiality, security and utility may preclude making certain documents or information available outside the Foundation.



## Open licences

Software created by the Foundation, in Foundation projects or with Foundation funds is released under the GNU General Public Licence, or other suitable Free Libre Open Source Software (FLOSS) licence.

Copyright works, other than software, are released under appropriate open licences; Creative Commons Attribution Share-Alike licence (CC\_BY SA) or the GNU Free Documentation licence (GNU FDL), or into the Public Domain.

Trademarks, Universal Resource Locators and artistic or other works which are the logos or form part of the brands of the Foundation or Foundation projects are not placed under open licences, and may be used only as explicitly permitted by the Foundation.

If there is sufficient justification an 'alternative licence' other than Creative Commons Attribution Share-Alike or the GNU FDL may be used, for example to allow the better integration of a resource into a larger resource pool.

The Foundation prefers Creative Commons licences which do not circumscribe moral rights such as the Creative Commons South Africa 2.5, and Creative Commons Generic (Unported) 3.0 licence, or subsequent versions of those licences.

## Exceptions

The Foundation recognises that at times there are specific compelling reasons for explicit exemptions to these principles in respect of particular resources. The decision to exempt a resource from any of the open access principles and the justification for the exception will be recorded. The extent of each exemption from the open licensing, open standards, open format and freedom from 'technical protection measures' principles will be specifically justified, and recorded.

When an agreement affects the creation of a resource then the agreement shall record each exception to any of the open access principles in respect of the each resources affected.

# APPENDIX B



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### May 2008

The Shuttleworth Foundation is committed to open philanthropy: using community, transparency and other open source principles to create a better world. How We Work is a series of occasional articles that take a critical look at one aspect of our open philanthropy practice. Our aim is to reflect and improve upon our efforts while also sharing what we've learned with others.

The Shuttleworth Foundation believes in open innovation. It is core to the society we want to build. Early on, we made a decision that what we do and fund should be under an open license. Our goal was to make it easy for people to use, adapt and improve whatever our staff and partners created. We wanted maximum viral impact, and we saw open licensing as the first step

in this direction.

As it turns out, making open licensing work isn't easy, and going viral is even tougher. In the three years since embracing open licensing, we've bumped up against confusion over IP [this is the first time this is being used so rather "intellectual property (IP)"] ownership, partners who are not willing to share, and lawyers who don't 'get' open. Also, in many cases, we've simply lost track of materials our partners have created. They may be open, but no one can find them. Not even us.

The good news is we're pushing past all of this, putting in place more systematic open licensing and archiving policies. As we do this, we thought we should write down how things have gone so far and explain where we are headed in the future. Hopefully, this will help others move into open licensing more quickly and successfully in the future.

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## Why open licensing?

Insisting on open licenses is partly about walking our talk. We are committed to openness in principle, and believe that open innovation can facilitate economic and social progress. It's important for us to have policies in place that are built on this principle. We also need mechanisms that model how these principles and policies can work in action.

However, the big opportunity with open licensing is far more practical: it has the potential to dramatically increase the impact, reach and scale of the ideas we invest in as a foundation. Good content, technology and research released under an open license is far more likely to be picked up, used and recirculated than materials that require permission to use. Simply having to ask for permission either deters or slows people down when they are looking for materials to use. Open licensing takes this inefficiency away and increases the likelihood that your materials will be used. This is especially important for small bits of research, blog postings, podcasts, photos and the like which, over time can help build up a global pool of open knowledge that others can use to build great things.

There is also a hope that open licensing can increase quality and speed up development for some of our bigger projects. For example, open licensing - combined with networking and community building - will make it possible for teachers all across South Africa to contribute to our Siyavula free textbook project. Each teacher can build and improve on the work of those that came before. Over time, other groups of teachers from other countries may take the materials for their own

use, improving them further and sharing them again (our licenses require this). While it's far from certain that this collaborative Wikipedia-effect will take hold with our educational materials, we don't even have a chance unless everything is under an open license.

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## Challenges along the way

With this combination of principles and pragmatism in mind, the Shuttleworth Foundation implemented its first open licensing policy in 2004.

Initially, this was simply a tacit agreement within the team that all materials created by staff, consultants or partners (aka grantees) would be under an 'open license'. While there was no written policy, openly licensing was regularly discussed during contract negotiations with partners and consultants. In most cases, contracts stated that the partner and the Foundation jointly owned whatever was created through the project in question, and that both would release resulting material under an open license. Members of the internal team released materials they had created under open licenses as well.

While this looked good on paper - clear, simple, aligned with our goals - making it work in practice was another matter

One challenge was getting partners to actually open license their materials. In some cases, partners who were unfamiliar with open licenses would balk at the open idea up front in contract negotiation process, leading to long, drawn out negotiations. In others, they would say 'I didn't know that's what you meant by open' towards the end of the project, and then refuse to apply an open license. And, in one case, the partner agreed to use an open license, but then used restrictively licensed artwork in their materials, making it impossible to actually apply the open license at the end of the day. All of this was exacerbated by the fact that the Foundation and partners were 50/50 owners of most materials. This joint ownership approach created a deadlock whenever there was a disagreement on open licensing.

Another major challenge was simply keeping track of materials and software that were created.

From the beginning, a good number of partners were happy to see their materials openly licensed. However, most partners didn't have a place to post these materials on the Internet. The Foundation only had a basic web site and did not have a specific policy to track and archive materials created by partners. The result: much of the research and content created using Foundation resources in the early days is impossible to find today, even if it is under an open

license. It turns out that a good archiving and knowledge management policy is just as important as the license itself.

The bottom line is that we didn't have the kind of innovation or viral impact that we were hoping for. Not even close. In fact, we basically had an 'open licensing principle' (this is what we believe) and not a functional open licensing policy (this is how it will work). In 2007, we set out to fix this.

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### **An evolving open licensing policy**

An overhaul of the Foundation's [open licensing policy](#) began in 2007 and went into place in early 2008. This written policy aims for a more cut and dry open licensing approach, making it easier for partners to understand and discuss our approach up front. There is standard contract language. Expectations on which licenses can be used are clear. At the same time, efforts to address archiving and access issues are also underway.

As in the past, the new policy requires that all resources created using our staff or funds must be 'open'. However, the details are much more concrete: software, reports, manuals, research results and other materials must be released under an open license and posted using an open format on a publicly accessible web site. While it is possible to motivate for other options, the preferred licenses are the GNU General Public License for software and Creative Commons Attribution Share Alike Generic 3.0 for everything else. These obligations are clearly stated in standard consulting and partnership contract templates, and are often a point of discussion as contracts are developed.

We've also tried to resolve the problems created previously by co-ownership, making sure that every piece of new intellectual property created has a single owner. While who this owner is needs to be decided on a case by case [rather "case-by-case"?] basis, it should always be a person or entity who is likely to champion and promote the idea in question. In the many cases, this is the author or originating organization. They have the the most vested interest in making sure that people know about, use and improve their materials. However, this isn't necessarily the case with massively collective works, like a wiki or collectively written piece of software. In these cases, a single owner like the Foundation or a network organization who will steward the idea on behalf of the whole group may be a better option. This stewardship approach is more and more common in the open source world and is standard policy at companies like Canonical (the company behind Ubuntu Linux).



It's important to emphasize that ownership here is not about access or use: the open licensing policy ensures that everyone has access. Ownership is about stewardship; making sure there is someone to run with and protect the openness of an idea for the long haul.

The final issue we needed to address was the accessibility and archiving of materials. The recently re-launched Shuttleworth Foundation web site will help with this, offering a more flexible and easy to use place to post materials. However, this is just a small piece of the puzzle. There also need to be policies in place and people checking to make sure that everything produced gets posted somewhere. This needs to be built around a simple workflow that will ensure it becomes part of the natural processes that staff and partners use when they are producing and publishing materials.

One possible approach would be to require that partners post everything they create somewhere public (their own site, Wikipedia, an existing open access research or software repository, etc.). The Foundation would in turn commit to pointing to this research and keeping a copy for archival purposes. All of this would be included in consulting and partnership contracts. The Foundation will develop and begin to execute a plan along these lines in the second half of 2008.

It's worth noting that there has been some early traction with these ideas, even if they aren't fully implemented. Simply putting open licensing in our standard contract language has led to many useful conversations with partners, deepening their understanding of the whole open innovation cycle. In turn, this has had a bit of a viral effect, with partners using open licenses even in unrelated projects and agreements with other parties. Also, on an operational level, discussions about licensing are much faster as our stance is clear cut. We are no longer reinventing the wheel with every contract.

See also: Shuttleworth Foundation [Open Resources Policy](#)

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## Open to a better world?

While there is a long way to go with all of this, it feels like we're getting closer to the right track. Requiring open licensing and rigorously archiving will ensure that all the materials created with Foundation resources will always be open and accessible. Picking the right owner or steward will increase the likelihood that the ideas we back are promoted, that communities form around them and that improvements are integrated and re-released. Hopefully, time and tweaking will result in an approach that really works.

We certainly believe that there is enough potential here that others - foundations, governments, research institutes, universities - should be looking at open licensing very seriously. The practical reasons are clear: increased likelihood of impact and scaling for ideas they fund, in ways that could never even be imagined by design. There are also less tangible but equally important benefits that come from the faster feedback loops and the promotion of open, collaborative ways of working. It's worth taking the time to ask: what are my reasons for keeping this or that idea closed? Unless there is a real bottom line reason, set your ideas free.

Of course, choosing to adopt an open licensing policy doesn't mean you won't meet obstacles along the way. The most common source of push back [rather "push-back"?] is foundation lawyers. The vast majority of these lawyers don't understand, or don't even know about open licenses. As a result, they often flag vague, unspecified risks related to going open. This has happened to us on a number of occasions. In the end, our legal experts have backed our interest in open licensing, underscoring our belief that the real risk is that resources created with passion, ingenuity and money, are lost, wasted or do not achieve the impact which they should. There is no real legal reason not to adopt an open licensing policy.

Another possible roadblock is foundation staff who are obsessed with 'tracking impact'. We've heard people like this say: if it's open and people can take it, I can't track the impact of what I've funded. We would ask in response: is it more valuable to loosely observe that you've had a huge impact because people are using and sharing what you've funded, or to rigorously track the fact that you've had almost no impact at all? Is it better to know all your possibilities for impact in advance, or to open things up so that people can evolve what you've funded into ideas and impact that you could never have imagined?

If you do decide to 'go open', it's important to take the time to be thoughtful about how it happens. Our experience suggests that there are three issues to pay particular attention to: license choice (choose a license like CC BY SA that has maximum viral impact); ownership (think about who has a stake in making ideas travel and keeping them open); and accessibility (make a clear plan for access and archiving). These are three areas we tripped up on, and that we're now working to improve. Watch this space. We'll be back with an update as we learn more along the way.



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This  
Work  
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# APPENDIX C

# SHUTTLEWORTH MASTER MEMORANDUM OF AGREEMENT

## 1. Definitions

In this agreement the following terms shall have the following meaning:

1.2 “*Background Intellectual Property*” means any Intellectual Property existing and vesting in the respective Parties prior to the date of this Agreement which either Party brings to the Project.

1.3 “*Foreground Intellectual Property*” means any Intellectual Property as may be created or developed by either of the Parties (including their employees) or any third party in the course of and/or pursuant to the project.

1.6 “Open licence” means:

1.6.1 For copyright works other than software a Creative Commons Licence, that is, any one, of the creative commons licences listed at <http://creativecommons.org/about/licences/meet-the-licences>, allowing anyone, including the Foundation, the Donee and any third party who is a party to one of these creative commons licences to freely use the intellectual property referred to in the relevant creative common licence subject to the terms and conditions and/or restrictions set out therein;

1.6.2 for software development, the “GNU GPL Licence” that is any one of the licences listed at <http://www.gnu.org/copyleft/gpl.html>, allowing anyone, including the Foundation, the Donee and any third party who is a party to one of these licences to freely use the intellectual property referred to in the relevant licence subject to the terms and conditions and/or restrictions set out therein;

1.6.3 for hardware, an appropriate open licence.

## 9. Intellectual Property

9.1 It is hereby agreed that:

9.1.1 the rights to any Background Intellectual Property shall continue to vest in the relevant Party that owned such Intellectual Property prior to this Agreement;

9.1.2 subject to clause 9.1.3, any Foreground Intellectual Property shall vest in the Foundation (whether or not the Donor was the creator or author of any such Intellectual Property). The Donee hereby assigns, for the territory of the world, to the Foundation, which hereby accepts, the Foreground Intellectual Property, it being recorded that the amount of the funding is sufficient consideration for this purpose. The Donee shall, at the Foundation's request and expense, execute any confirmatory assignment and any other appropriate documents as the Foundation may require. In addition, the Donee shall, when called upon to do so by the Foundation, provide all reasonable information, materials, co-operation and/or assistance to the Foundation to enable the Foundation to apply to register (where applicable) the Foreground Intellectual Property as well as the Foundation's title to such Foreground Intellectual Property before any court or wherever such proof may reasonably be required.

*There are two alternatives, when either (or both) are applicable then they shall appear in addition to the standard clause 9.1.2 :*

*9.1.2A Should the Foreground Intellectual Property be subject to constitute statutorily defined publicly financed research then that Foreground Intellectual Property shall vest jointly in the Foundation and Donee, and either may apply an an open licence, if a work is subject to copyright then the work shall be licenced under a Creative Commons Attribution Share Alike licence, unless the work consists of software in which case the work shall be licenced under the GNU GPL. For the purposes of the Intellectual Property Publicly Rights Financed Research*

*Bill, the parties hereby record that all funding used in connection with the Project be the parties' own funding, which will not include any funding provided by any third party.*

*9.1.2B Should Foreground Intellectual Property be created or partially created by the contributions of multiple, voluntary, unpaid contributors to an open licenced resource then the rights to those contributions shall vest in each contributor, provided that the Intellectual Property as a whole shall be licenced under an open licence, and provided that all contributions by the Donee, and all other paid contributions shall vest in the Donor.*

9.1.3 Foreground Intellectual Property, and any of the Parties' respective Background Intellectual Property included in project deliverables, shall become the subject of the Open Licence selected by the Foundation.

9.2 The Donee warrants that:

9.2.1 the use of the Donee's Background Intellectual Property, and the Foreground Intellectual Property will not infringe the Intellectual Property or other rights of any third party and the Donee hereby indemnifies and holds the Foundation harmless against any and all harm, damage, loss and costs (including legal costs) which it may suffer from a breach of these warranties; and

9.2.2 the Donee has the necessary permission (including licences or other lawful permissions) when using the Intellectual Property of third parties.

9.3 The Donee shall ensure that all of its employees are under an obligation to assign all Intellectual Property created by them to the Donee or that they enter into an agreement by which such Intellectual Property will be owned by the Donee, so as to enable the Donee in turn to assign such Intellectual Property to the Foundation.

9.4 The Donee agrees that where, in the course of the Project, it engages the assistance of or commissions works from any third party, it shall procure that

all Intellectual Property created by the third party or attaching to such works shall vest in the Foundation, or at least shall be assigned to the Foundation. The Donee shall ensure that any agreement with a third party concerning the creation of Intellectual Property in the course of the project shall contain a provision vesting the Intellectual Property in the Foundation, and that the Donee shall accept the benefit on behalf of the Foundation purely as a stipulatio alteri and without creating a relationship of agency on the part of the Donee. The Donee shall provide a copy of every such agreement to the Foundation. Failing the foregoing the Donee shall at least procure that all Intellectual Property created by the third party or attaching to such works shall vest in the Donee or at least shall be assigned to the Donee so that the Donee in turn will be able to assign such rights to the Foundation.



# SHUTTLEWORTH CONSULTANCY AGREEMENT

## 9. Intellectual Property

- 9.1 The intellectual property rights of resources and content developed by the Consultant will be owned by the Foundation.
- 9.2 The Foundation will apply a Creative Commons License to the content and resources. The conditions of the license include Attribution and Share alike.
- 9.3 This Creative Commons License means that the Foundation and the Consultant can freely copy, distribute, display and perform, make derivatives and make commercial use out of any part of the resources.
- 9.4 However, under the Creative Commons license, any member of the public can also freely copy, distribute, display and perform and make derivatives, provided that they credit the original and subsequent authors.

# APPENDIX D



## Increase Funding Impact

### Recommendations for Organizations that Fund the Production of Open Educational Resources (OER)

#### What is this document?

All funding organizations want their grantees to achieve the maximum possible impact. We recommend that foundations and other funding organizations who support the production of educational resources should adopt a policy that strongly encourages or requires their grantees to disseminate such resources under Creative Commons licenses in order to maximize their reach and impact.

#### Who is it for?

Any organization that supports the production and dissemination of OER.



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**Open Educational Resources** are teaching, learning and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others<sup>1</sup>. Many foundations and other funding organizations have embraced the promise of OER by supporting their production and dissemination. In theory, these OER should serve as the basis for major improvements in educational access and quality worldwide. In practice, there are barriers to achieving this impact. The core recommendation of this document addresses one of those barriers:

*Funders of educational resources should have policies that require grantees to clearly specify the terms of use that will govern those resources. If the resources being funded are Open Educational Resources, the policy **must** call for some form of open licensing. Otherwise, the resources are not open because copyright law's default "all rights reserved" will govern the terms of use. As a result, users will have to ask for permission for a range of uses. They are unlikely to do so, and the educational impact of the resources will be significantly diminished.*

<sup>1</sup> The William and Flora Hewlett Foundation. <http://www.hewlett.org/oer>

Here are illustrations of some of the ways that the open educational resources may not be having the desired impact:

**#1** You have spent millions of dollars supporting the production of open and free educational resources. You know that the quality of your grantees and the resources they have produced is top-notch. And yet...

- Would-be users do not seem to understand what they are allowed to do with the resources.
- The resources are not being copied, shared, translated, or improved upon, even though that was one of the primary objectives of making them.
- Due to uncertainty about whether permission would be required, those who do improve the resources keep their creativity in the dark rather than re-posting online.

**Therefore:** *Funded resources are only used when grantee is directly involved, greatly reducing the access and dissemination advantages inherent to publication on the Internet.*

**#2** Well developed communities of teachers and students exist who are eager to combine different educational resources in interesting and instructive ways. The tools are in place. The pool of resources, which your funding dollars helped create, seems to be large enough, and is growing. And yet...

- Copyright uncertainty engenders fear that even self-described open educational resources are not truly safe.
- Teachers are forced to make a choice between becoming copyright experts or risking claims of copyright infringement if they want to use or combine materials, even when available under different “open” licenses.

**Therefore:** *Teachers conservatively stick with traditional materials and are unable to take advantage of resources you’ve funded.*

**#3** Internationally there is excitement about the potential to translate and customize resources so that people have access to high-quality learning materials in their native language and suited to their ways of schooling. Educational platforms and content repositories are built, and it would seem that educational access and opportunity the world over is on the verge of a revolution. And yet...

- Questions and concerns proliferate about confusing terms of use, customized licenses, and other layers of uncertainty attached to many educational resources.
- Difficult or inaccessible technical formats discourage people from re-using and translating materials.





**Therefore:** *Educators in the developing world find that they cannot benefit from the resources that exist and cannot participate in open education as equals.*

**Net Result:** **Your investments in your grantees and the educational resources they have created are not achieving their full potential.**





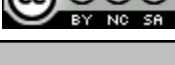

*If scenarios like these alarm you, become part of the solution. To maximize the impact of the resources you support, please consider adopting an OER availability policy in your grant agreements that requires or encourages grantees to follow these best practices for copyright licensing. Turn the page for more details.*

## 1. Require all OER to be published and disseminated under a Creative Commons license.

The industry-standard for open content licenses is the family of Creative Commons (CC) licenses. We recommend that you browse the ccLearn FAQ to learn more about these important licensing choices in education. In brief, Creative Commons offers free, public licenses that contain combinations of the following conditions:

-  **Attribution.** You let others copy, distribute, display and perform your copyrighted work – and derivative works based upon it – but only if they give you credit. All CC licenses contain this condition.
-  **Non-Commercial.** You let others copy, distribute, display and perform your work – and derivative works based upon it – but for non-commercial purposes only. If they want to use your work for commercial purposes, they must contact you for permission.
-  **Share Alike.** You allow others to distribute derivative works but only only under the same conditions as you made your work available.
-  **No Derivatives.** You let others copy, distribute, display, and perform only verbatim copies of your work — not make derivative works based on it. If they want to translate, alter, transform, or combine your work with other works, they must contact you for permission.

Based on the combination of conditions you select, CC gives you a license that clearly indicates how other people may use your creative work. The six different CC licenses are described here:

	<b>Attribution</b>	This license lets others copy, share, modify and build upon your work, even commercially, as long as they credit you for your original creation. This is the most accommodating of licenses offered, and is ccLearn’s recommended license for OER.
	<b>Attribution — Share-Alike</b>	This license lets others copy, share, modify and build upon your work even for commercial purposes, as long as they credit you and license new creations derived from your work under the same conditions.
	<b>Attribution — No Derivatives</b>	This license allows others to copy and share your work, including commercially, as long as it is passed along unchanged and in whole, with credit to you. Your work can be included in compendiums, but may not be translated or modified without your permission.
	<b>Attribution — Non-Commercial</b>	This license lets others copy, share, modify and build upon your work non-commercially, as long as they credit you.
	<b>Attribution — Non-Commercial — Share-Alike</b>	This license lets others copy, share, modify and build upon your work non-commercially, as long as they credit you and license new creations derived from your work under the same conditions.
	<b>Attribution — Non-Commercial — No Derivatives</b>	This license allows others to copy and share your work non-commercially, as long as they credit you. Your work may not be translated or modified without your permission. This license is the most restrictive of our six main licenses.

In addition to offering these choices, CC licenses are specifically designed to be easy to apply and simple for creators and users to understand. Their *standardized* terms and technical implementation mean that they can be used all over the world. OER published under CC licenses can become part of a large and growing pool of resources that collectively have a reach and impact that would not be possible if many different licenses were used.

This standardization means that people need only familiarize themselves with our small family of licenses. These permissions have been usefully condensed into *simplified and accessible deeds* with *universally recognized icons* that give quick reference to the rights and conditions associated with any resource. In addition, CC licenses are *machine-readable*, which means that CC licensed resources can be searched for and aggregated using standard web-browsing tools (such as Google, Yahoo!, or CC’s own search tools) that make discovery and dissemination of OER simple and effective.

## **2. Encourage use of the Creative Commons Attribution-only (CC BY) license whenever possible.**

The CC BY license is the easiest way to ensure that the OER your organization funds will have the maximum impact possible in terms of dissemination and reuse. Works licensed with CC BY can be redistributed and adapted without restriction other than attribution. This means the works can be translated, localized, incorporated into commercial products, and combined with other educational resources. CC BY allows these reuses by anyone for any purpose, all with credit to the original creator, your grantee. In some situations it may seem important for your grantees to be able to restrict what recipients can do with OER you helped fund. In such cases, you should consider carefully whether the consequences of those restrictions are justifiable.

Take, for example, a grantee who wants to choose a license that prohibits the creation of derivative works (such as CC's no derivatives (ND) licenses). Although the integrity of the work may be protected under a ND license, in the world of OER that limitation means the OER cannot be translated, adapted or localized, all of which are critically important in an educational setting.

A second example is the non-commercial (NC) term, which prohibits commercial use. That term might be desired by organizations that balk at the idea that their commercial competitors are able to freely incorporate their materials into their own works and make money off of your grantee's work. However, it is difficult to clearly define commercial activity, which means that people may avoid resources with the NC term even though they were planning to engage in desirable and legitimate activities using your works.

A third example is the share-alike (SA) term, which requires that any derivative works be distributed under the same conditions as the original work. This term is attractive to organizations that want to use their works to expand the corpus of open materials by requiring that any work based on those materials be open in turn, even at the cost of precluding many potential reuses. However, works with the share-alike condition are difficult or impossible to combine with other openly licensed educational resources, which can pose a barrier to students and educators in many cases.

Although some might look forward to a day when all OER is in the public domain, freely accessible and reusable for any purposes without condition, CC recognizes the importance to many of having some legal restrictions on OER they fund or create. We recommend, however, imposing restrictions beyond attribution only when necessary and only when the cost of doing so can be fairly justified.

## **3. Ensure that your grantees apply Creative Commons licenses correctly.**

When properly applied to online resources, Creative Commons licenses are machine-readable, thereby facilitating their discovery. Improper or incomplete application of the licenses to the OER will lack this crucial feature, virtually guaranteeing that the discoverability and impact of the resources will be reduced.

## **4. Verify that grantees are disseminating their products in formats that actually enable the behaviors (e.g., access, translation, re-mixing) that they have legally permitted.**

If your grant recipients have given permission to users to translate their OER, then you should also be sure they provide the OER in a format that allows users to do that easily. If your grantees are worried about loss of fidelity or formatting issues, encourage them to release the same OER in multiple formats so that any given user is likely to find a suitable version.

### **Questions?**

This is a highly abbreviated document. For more information about these and related topics, visit Creative Commons ([creativecommons.org](https://creativecommons.org)) or send questions directly via email to [ccllearn-info@creativecommons.org](mailto:ccllearn-info@creativecommons.org).

# APPENDIX E

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No covered work shall be deemed part of an effective technological measure under any applicable law fulfilling obligations under article 11 of the WIPO copyright treaty adopted on 20 December 1996, or similar laws prohibiting or restricting circumvention of such measures.

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## 4. Conveying Verbatim Copies.

You may convey verbatim copies of the Program's source code as you receive it, in any medium, provided that you conspicuously and appropriately publish on each copy an appropriate copyright notice; keep intact all notices stating that this License and any non-permissive terms added in accord with section 7 apply to the code; keep intact all notices of the absence of any warranty; and give all recipients a copy of this License along with the Program.

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## 5. Conveying Modified Source Versions.

You may convey a work based on the Program, or the modifications to produce it from the Program, in the form of source code under the terms of section 4, provided that you also meet all of these conditions:

- a) The work must carry prominent notices stating that you modified it, and giving a relevant date.
- b) The work must carry prominent notices stating that it is released under this License and any conditions added under section 7. This requirement modifies the requirement in section 4 to “keep intact all notices”.
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## 6. Conveying Non-Source Forms.

You may convey a covered work in object code form under the terms of sections 4 and 5, provided that you also convey the machine-readable Corresponding Source under the terms of this License, in one of these ways:

- a) Convey the object code in, or embodied in, a physical product (including a physical distribution medium), accompanied by the Corresponding Source fixed on a durable physical medium customarily used for software interchange.
- b) Convey the object code in, or embodied in, a physical product (including a physical distribution medium), accompanied by a written offer, valid for at least three years and valid for as long as you offer spare parts or customer support for that product model, to give anyone who possesses the object code either (1) a copy of the Corresponding Source for all the software in the product that is covered by this License, on a durable physical medium customarily used for software interchange, for a price no more than your reasonable cost of physically performing this conveying of source, or (2) access to copy the Corresponding Source from a

network server at no charge.

- c) Convey individual copies of the object code with a copy of the written offer to provide the Corresponding Source. This alternative is allowed only occasionally and noncommercially, and only if you received the object code with such an offer, in accord with subsection 6b.
- d) Convey the object code by offering access from a designated place (gratis or for a charge), and offer equivalent access to the Corresponding Source in the same way through the same place at no further charge. You need not require recipients to copy the Corresponding Source along with the object code. If the place to copy the object code is a network server, the Corresponding Source may be on a different server (operated by you or a third party) that supports equivalent copying facilities, provided you maintain clear directions next to the object code saying where to find the Corresponding Source. Regardless of what server hosts the Corresponding Source, you remain obligated to ensure that it is available for as long as needed to satisfy these requirements.
- e) Convey the object code using peer-to-peer transmission, provided you inform other peers where the object code and Corresponding Source of the work are being offered to the general public at no charge under subsection 6d.

A separable portion of the object code, whose source code is excluded from the Corresponding Source as a System Library, need not be included in conveying the object code work.

A “User Product” is either (1) a “consumer product”, which means any tangible personal property which is normally used for personal, family, or household purposes, or (2) anything designed or sold for incorporation into a dwelling. In determining whether a product is a consumer product, doubtful cases shall be resolved in favor of coverage. For a particular product received by a particular user, “normally used” refers to a typical or common use of that class of product, regardless of the status of the particular user or of the way in which the particular user actually uses, or expects or is expected to use, the product. A product is a consumer product regardless of whether the product has substantial commercial, industrial or non-consumer uses, unless such uses represent the only significant mode of use of the product.

“Installation Information” for a User Product means any methods, procedures, authorization keys, or other information required to install and execute modified versions of a covered work in that User Product from a modified version of its Corresponding Source. The information must suffice to ensure that the continued functioning of the modified object code is in no case prevented or interfered with solely because modification has been made.

If you convey an object code work under this section in, or with, or specifically for use in, a User Product, and the conveying occurs as part of a transaction in which the right of possession and use of the User Product is transferred to the recipient in perpetuity or for a fixed term (regardless of how the transaction is characterized), the Corresponding Source conveyed under this section must be accompanied by the Installation Information. But this requirement does not apply if neither you nor any third party retains the ability to install modified object code on the User Product (for example, the work has been installed in ROM).

The requirement to provide Installation Information does not include a requirement to continue to provide support service, warranty, or updates for a work that has been modified or installed by the recipient, or for the User Product in which it has been modified or installed. Access to a network may be denied when the modification itself materially and adversely affects the operation of the network or violates the rules and protocols for communication across the network.

Corresponding Source conveyed, and Installation Information provided, in accord with this section must be in a format that is publicly documented (and with an implementation available to the public in source code form), and must require no special password or key for unpacking, reading or copying.

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To do so, attach the following notices to the program. It is safest to attach them to the start of each source file to most effectively state the exclusion of warranty; and each file should have at least the “copyright” line and a pointer to where the full notice is found.

```
<one line to give the program's name and a brief idea of what it does.>  
Copyright (C) <year> <name of author>
```

```
This program is free software: you can redistribute it and/or modify  
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the Free Software Foundation, either version 3 of the License, or  
(at your option) any later version.
```

```
This program is distributed in the hope that it will be useful,  
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```

```
You should have received a copy of the GNU General Public License  
along with this program. If not, see <http://www.gnu.org/licenses/>.
```

Also add information on how to contact you by electronic and paper mail.

If the program does terminal interaction, make it output a short notice like this when it starts in an interactive mode:

```
<program> Copyright (C) <year> <name of author>
This program comes with ABSOLUTELY NO WARRANTY; for details type `show w'.
This is free software, and you are welcome to redistribute it
under certain conditions; type `show c' for details.
```

The hypothetical commands `show w' and `show c' should show the appropriate parts of the General Public License. Of course, your program's commands might be different; for a GUI interface, you would use an “about box”.

You should also get your employer (if you work as a programmer) or school, if any, to sign a “copyright disclaimer” for the program, if necessary. For more information on this, and how to apply and follow the GNU GPL, see <http://www.gnu.org/licenses/>.

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# APPENDIX H

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# Policies

## Other Policies

### INTELLECTUAL PROPERTY ARISING OUT OF THE USE OF FOUNDATION FUNDS

#### Introduction

Foundation grants often result in tangible products, such as reports, papers, research, data sets, books, film or television documentaries, or radio programs ("Grant Work Product"). This Policy addresses the ownership, use, copyright to, and distribution of the Grant Work Product by balancing the interests of the Foundation with the interests of the grantee and other interested parties. The Foundation is cognizant that fast-evolving technological advances are impacting the manner and method by which knowledge in whatever form can be protected and distributed and the Foundation will evaluate this policy in light of experience.

#### Policy

The Foundation's policy is to ensure that the Grant Work Product furthers charitable purposes and benefits the public. To that end, the Foundation seeks prompt and broad dissemination of the Grant Work Product at minimal cost or, when justified, at a reasonable cost.

The Foundation encourages openness in research and freedom of access to underlying data by persons with a serious interest in the research. Grantees are also encouraged to explore opportunities to use existing and emerging internet distribution models and, when appropriate, open access journals, Creative Commons license or similar mechanisms that result in broad access for the interested field and public.

The Foundation recognizes there may be circumstances where limited or delayed dissemination of Grant Work Product or limited access to data may be appropriate to



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## Foundation Policies

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This Policy is effective September 18, 2008.

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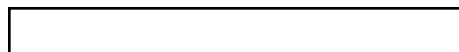
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# APPENDIX J



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## Office for Scholarly Communication

### Harvard Open-Access Policies

To date, three faculties at Harvard have enacted policies promoting open access to their scholarly writings. Text of the policies is provided for reference here.

#### Harvard Faculty of Arts and Sciences Open-Access Policy voted February 12, 2008

The Faculty of Arts and Sciences of Harvard University is committed to disseminating the fruits of its research and scholarship as widely as possible. In keeping with that commitment, the Faculty adopts the following policy: Each Faculty member grants to the President and Fellows of Harvard College permission to make available his or her scholarly articles and to exercise the copyright in those articles. In legal terms, the permission granted by each Faculty member is a nonexclusive, irrevocable, paid-up, worldwide license to exercise any and all rights under copyright relating to each of his or her scholarly articles, in any medium, and to authorize others to do the same, provided that the articles are not sold for a profit. The policy will apply to all scholarly articles written while the person is a member of the Faculty except for any articles completed before the adoption of this policy and any articles for which the Faculty member entered into an incompatible licensing or assignment agreement before the adoption of this policy. The Dean or the Dean's designate will waive application of the policy for a particular article upon written request by a Faculty member explaining the need.

To assist the University in distributing the articles, each Faculty member will provide an electronic copy of the final version of the article at no charge to the appropriate representative of the Provost's Office in an appropriate format (such as PDF) specified by the Provost's Office.

The Provost's Office may make the article available to the public in an open-access repository. The Office of the Dean will be responsible for interpreting this policy, resolving disputes concerning its interpretation and application, and recommending changes to the Faculty from time to time. The policy will be reviewed after three years and a report presented to the Faculty.

#### Harvard Law School Open Access Policy voted May 1, 2008

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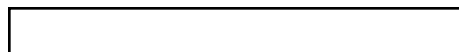
**Harvard Kennedy School of Government Open Access Policy**

voted March 10, 2009

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## Office for Scholarly Communication

### Policy FAQ

Note: Throughout this document, the phrase "the Open Access Policy" refers to the pertinent open access policy as voted by one of the schools of Harvard University. Further information on the [various schools' policies](#) can be found at the [OSC web site](#).

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#### Why are we doing this?

Harvard University has long had a policy that ["when entering into agreements for the publication and distribution of copyrighted materials individuals will make arrangements that best serve the public interest."](#) In the eyes of many, including the Provost's Committee on Scholarly Publishing and large numbers of individual faculty members, this goal is best served by using the unified action of the faculty to enable individual faculty to distribute their scholarly writings freely.

Other organizations with a vested interest in scholarship are independently supporting such efforts as well. For instance, the Wellcome Trust requires any scholarly articles on research they fund to be made openly accessible. The National Institutes of Health, by congressional legislation, have recently instituted [a similar requirement](#), mandating posting in the open-access PubMed Central repository.

#### Is the university taking the rights to my writing?

No. The Open Access Policy grants a specific nonexclusive license to Harvard. You still retain ownership and complete control of the copyright in your writings, subject only to this prior license. You can exercise your copyrights in any way you see fit, including transferring them to a publisher if you so desire. (However, if you do so, Harvard would still retain its license and the right to distribute the article from its repository. Also, if your article arises, in whole or in part, from NIH-funded research and was accepted for publication after April 7, 2008, you must [retain sufficient rights to comply with NIH's Public Access Policy](#).)

#### What kinds of writings does this apply to?

Only scholarly articles. Using terms from the [Budapest Open Access Initiative](#), faculty's scholarly articles are articles that describe the fruits of their research and that they give to the world for the sake of inquiry and knowledge without expectation of payment. Such articles are typically presented in peer-reviewed scholarly journals and conference proceedings. Many of the written products of faculty effort are not encompassed under this notion of scholarly article: books, popular articles, commissioned articles, fiction and poetry, encyclopedia entries, ephemeral writings, lecture notes, lecture videos, or other copyrighted works. This is not to denigrate such writings. Rather, they are generated as part of separate publishing or distribution mechanisms that function in different ways and whose shortcomings, if any, the present motion does not and is not meant to address.

#### **Does the policy apply to articles I wrote before the policy was adopted?**

No, it doesn't apply to any articles that were completed before the policy was adopted, nor to any articles for which you entered into an incompatible publishing agreement before the policy was adopted. Of course, the policy also does not apply to any articles you write after leaving Harvard.

#### **Does the policy apply to co-authored papers?**

Yes. Each joint author of an article holds copyright in the article and, individually, has the authority to grant Harvard a non-exclusive license. Joint authors are those who participate in the preparation of the article with the intention that their contributions be merged into inseparable or interdependent parts of the whole.

#### **Isn't this kind of policy unprecedented?**

No. As mentioned above, the Wellcome Trust [mandates an open access requirement](#) for their grantees. NIH also has a [policy mandating open access](#). Furthermore, research funded by the US government has been subject to a prior license for governmental use. If your research has been funded by the government, your writings have been subject to this license.

#### **Why make this an automatic license? Why not just suggest that faculty individually retain a license for open-access distribution?**

First, experience has shown that mere exhortations have little effect on authors' behavior. For instance, before Congress made it a requirement, participation in the NIH Public Access Policy was optional. During that period, there was only a 4% level of compliance. Second, experience in many areas has shown that opt-out systems achieve much higher degrees of participation than opt-in systems, even while remaining noncoercive. Third, by making a blanket policy, individual faculty benefit from their membership in the policy-making group. The University can work with publishers on behalf of the faculty to simplify procedures and broaden access. Without a blanket policy, the unified action benefit of the policy would be vitiated.

#### **What's in it for me?**

The Internet and web have enabled individual faculty to make their articles widely, openly, and freely available. Research has repeatedly shown that articles available freely online are [more often cited](#) and have greater impact than those not freely available, and this trend is increasing over time. Consequently, many faculty already make their writings available on their web pages, sometimes in potential violation of copyright law and sometimes through individual copyright negotiations with publishers. The Open Access Policy will allow you to make your writings openly accessible, and it will enable the University to help you do so.

#### **What do I have to do to comply with the Open Access Policy?**

Here is the two-word answer: [always deposit](#).

For more detail on complying with the policy, including information on addenda, waivers, and deposit, see the [Procedural FAQ](#).

#### **What if a journal publisher refuses to publish my article because of this prior license?**

You have a number of options. One is to obtain a [waiver](#) of the license under the policy. Alternatively, you can work to persuade the publisher that it should accept Harvard's non-exclusive



license in order to be able to publish your article, or seek a different publisher. You can consult with the [Office for Scholarly Communication](#) for help in the process of working with publishers and addressing their specific concerns.

### **What will Harvard do with the articles it has license to?**

The University has set up an open-access repository called [DASH](#) to make available the scholarly articles provided by its faculty members. This repository has the institution of Harvard standing behind it to ensure its availability, longevity, and functionality, to the extent technologically feasible. The repository will be backed up, mirrored, and made open to harvesting by search services such as [OAIster](#) and [Google Scholar](#).

The repository is run by the Office of Scholarly Communication with oversight from a [University-wide faculty advisory board](#) that provides advice on specific policies regarding the coverage, structure, and management of the repository.

Through the transferability provision, Harvard may further allow others to distribute the content, provided that the articles are not sold for profit. For instance, faculty at other institutions could be given permission to make copies for free distribution directly to their students. However, Harvard does not have—and cannot grant to others—the right to sell the articles for a profit or to sell a book containing the articles for a profit.

### **Can others distribute my work, for instance, placing it in a course pack?**

Only a party with appropriate rights can license an article for use in a course pack. The Open Access Policy grants Harvard the right to license such uses, so long as the course pack was not sold for profit, so that others (and yourself if you otherwise transfer copyright) could get permission from Harvard for free use of your articles in course packs. Alternatively, others (and you) could continue to get permissions from the publisher, typically by paying royalties to the publisher, if desired. To take another example, Harvard also could authorize others to make your articles available online (for example, in another repository), provided that they were not sold for a profit. Of course, no one would be able to sell your articles for profit without getting permission from the appropriate rights holder, whether that be you or a publisher to whom you have assigned such rights.

### **Can my articles be used to provide search or other services by companies such as Google?**

Yes, consistent with the goals of open access and ensuring wide visibility and availability of scholarly articles, the license allows Harvard to enable both commercial and nonprofit entities to use the articles to provide search or other services, so long as the articles are not being sold for a profit. For instance, the license allows Harvard to enable the articles to be harvested and indexed by search services, such as Google Scholar, so that they can more readily be found, and to be used to provide other value-added services that don't involve selling the articles themselves for a profit. Harvard also could authorize use of the articles in a commercial service that provides information extracted from the articles (but not the full text itself), such as bibliographic data or citation lists.

### **Will Harvard be able to take advantage of future changes in technology to provide open access to the articles?**

Yes, if new technological means of distributing or making the articles available evolve during the lengthy term of copyright, the license is intended to give Harvard the flexibility to use those means to advance the purposes of the policy, provided always that the articles are not sold for a profit.