

# Intellectual Property Rights, and Distance Learning: Changes for OSU

Issue Group Report  
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## EXECUTIVE SUMMARY

The Issues and Charge. The rapid development of advanced technology educational materials (ATEM) at Oregon State University (OSU) has led to a need to review intellectual property rights policies. Examples of ATEM include web-based courses, videotapes, and compact discs produced for distribution both on-campus and by distance delivery systems. OSU faculty members and other staff members produce ATEM, and questions have emerged about ownership and copyright of intellectual property, the policies for dividing revenue, the control of disseminating and marketing materials, and the rights to move products between sites. Additional questions involve recognition of authorship for material involving multiple authors.

The intellectual property rights policies at OSU will become increasingly important, with impacts on student numbers and revenue. Since beginning in 1998, Distance and Continuing Education has grown to include 5,000 students during the current academic year. Expectations are that 20,000 students will be enrolled in distance education courses at OSU by the year 2005. If OSU is going to produce the ATEM necessary to attract and support such a rapidly increasing number of distance education students, the policy for intellectual property rights must create an environment that will encourage increasing

numbers of faculty members from all academic units to participate. In particular, growth of distance education at OSU will require the involvement of large numbers of faculty members and staff who generate quality courses that are available both on-campus and through distance delivery systems.

The Oregon University System (OUS) recognizes the need to review copyright policies for advanced technology educational materials, and the relevance of such policies to the growth of distance education in Oregon. A recent report from OUS, entitled *Distance Education Policy and Framework 2000* (Appendix 1), describes current copyright procedures for distance education materials. The OUS report also requests that universities make recommendations for revising copyright policies for distance education materials, including ATEM.

The OSU Provost and Executive Vice President, and the Faculty Senate President, established an Issue Group on the topic of Intellectual Property Policy and Distance Education. The Issue Group wrote this report to explain how revision of current policies could benefit students and faculty members at OSU and in the Oregon University System. Specific objectives of the report reflect the following charges:

1. Defining current OSU guidelines;
2. Comparing guidelines from other universities;
3. Creating Courses for On-Campus use vs Distance Education Use
4. Comparing Work for Hire to Creating Intellectual Property
5. Explore and Recommend Models for Royalty Distribution

The Direction for Policy Changes. Our committee is unanimous in the opinion that OUS intellectual property and copyright policies are not adequate for coping with intellectual products produced from new technologies. The interests of OSU are best served if copyright policies are modified to promote faculty involvement in the development of ATEM. Challenges for policy development will include issues of fairness, division of revenue, and legal requirements that bind OSU with other universities and the State Legislature. Creating a fair, flexible, and comprehensive intellectual copyright policy will be beneficial for all, and will spur the development of ATEM necessary for expansion of distance education. Developing and delivering distance education offerings will lead to further improvements in the accessibility of an OSU education to students, benefit faculty members, and further the development of OSU in the arena of high technology.

Immediate Changes. The leadership at OSU that can take immediate actions to further encourage and develop advanced technology educational materials. Such recommendations must fall within current OUS and OSU guidelines, fit within existing resources, and provide improved position for shaping long-term policy changes. Following our review, we recommend:

1. The MOU currently used by Distance and Continuing Education should be utilized as the university-wide policy, but only until more appropriate means are developed to structure agreements between OSU faculty members and the Office of Technology Transfer.
2. The Office of Technology Transfer at OSU should be provided the resources to evaluate the additional staff, equipment, and funds necessary to implement and

administer a policy in which OSU sought cost recovery for its investment in developing the ATEM anticipated for the expansion of distance education.

3. Distance and Continuing Education at OSU should be provided resources to evaluate the potential revenue stream from royalties and tuition that could be generated from anticipated growth of ATEM used in distance education.
4. The Technology Transfer Program and Distance and Continuing Education should collaborate to design a business plan to project the increasing costs and revenue streams of increasing ATEM use both on-campus and in distance education.
5. OSU should form an Intellectual Property Rights Task Force that includes the Provost and Executive Vice President, the Dean of Distance and Continuing Education, the Director of the Office of Technology Exchange, the Vice Provost for Information Services, the Faculty Senate President, and representatives of the faculty appointed by the Faculty Senate President. The Task Force would be responsible for designing the approach for changing copyright policies that protect the interests of faculty members and allow the University to develop distance education with adequate scope and scale to meet financial and educational goals.

The Long-Term Needs. OSU is in a position to act with the other OUS institutions to pioneer intellectual property right policies for ATEM. In addition, OSU is positioned to take a leading role in the statewide effort to create an intellectual property rights policy that is innovative and fair to all those in the OUS system. Any change in the OSU policies regarding intellectual property rights will require revision of OUS guidelines, which is a daunting task. Revision of OUS copyright guidelines will involve complex issues, large numbers of people from OUS institutions, and eventually the modification of Oregon Administrative Rules established by the Oregon Legislature. A set of long-term needs includes:

1. Defining instructional materials eligible for copyright;
2. Specifying ownership interests that include authorship, sequential authorship, responsibility for update and accuracy, mobility concerns, and issues of liability;
3. Developing guidelines for contracts that divide ATEM revenue streams between the university and faculty.
4. Designing mechanisms that allow OSU and OUS to clearly communicate faculty rights and responsibilities in the matter of intellectual property rights;
5. Providing mechanisms that allow universities within OUS to address their own, specific guidelines regarding intellectual property rights without having to initiate wholesale actions at all levels.

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## 1. Introduction

1.1. The Rationale for Policy Review. The rapid development of advanced technology educational materials (ATEM) at Oregon State University (OSU) has led to a need to review intellectual property rights policies. Examples of ATEM include web-based courses, videotapes, and compact discs produced for distribution both on-campus and by distance delivery systems. OSU faculty members and other staff members produce ATEM, and questions have emerged about ownership and copyright of intellectual property, the policies for dividing revenue, the control of disseminating and marketing materials, and the rights to move products between sites. Additional questions involve recognition of authorship for material involving multiple authors.

The intellectual property rights policies at OSU will become increasingly important, with impacts on student numbers and revenue. Since beginning in 1998, Distance and Continuing Education has grown to include 5,000 students. Expectations are that 20,000 students will be enrolled in distance education courses at OSU by the year 2005. If OSU is

going to produce the ATEM necessary to attract and support such a rapidly increasing number of distance education students, the policy for intellectual property rights must create an environment that will encourage increasing numbers of faculty members from all academic units to participate. In particular, growth of distance education at OSU will require the involvement of large numbers of faculty members and staff who generate quality courses that are available through distance delivery systems.

The Oregon University System (OUS) recognizes the need to review copyright policies for advanced technology educational materials, and the relevance of such policies to the growth of distance education in Oregon. A recent report from OUS, entitled *Distance Education Policy and Framework 2000* (Appendix 1), describes current copyright procedures for distance education materials. The OUS report also requests that universities make recommendations for revising copyright policies for distance education materials including ATEM.

1.2. The Charge. To evaluate matters, OSU Provost and Executive Vice President, Tim White, and the Faculty Senate President, Gordon Matzke, formed an Issue Group on the topic of Intellectual Property Policy and Distance Education. The Issue Group represents a diverse group, all with experience in some aspect of ATEM. The recommendations reflect the collective experience with both ATEM and with the current copyright guidelines. Recommendations also reflect our understanding that producers of ATEM are part of a complex academic system, and that the common purpose is to continue producing the most compelling learning opportunities for all students.

The Issue Group was instructed to examine the current policies that define ownership and use of intellectual properties created for distance education, to determine how existing policies affect the development of ATEM, and to identify changes or clarification in policy necessary to incorporate ATEM into accepted scholarly standards. With the general need to explore the mechanisms for policy revision, the OSU Issue Group was given the following charges:

1. Review policies of other societies and institutions;
2. Evaluate current OSU policies and find areas needing change;
3. Clarify definitions of on-campus and distance education activities. Separate work for hire and activity that generates original intellectual property;
4. Explore and recommend models for royalty distribution that are fair and legal;
5. Develop proposed language for policy revisions.

1.3. Issues and Resources Considered. The issue of intellectual property rights is not new to higher education, and involves many universities including OSU. The need to revise policies regarding intellectual property related to distance education involves tradeoffs between benefits important to both universities and authors. Benefits to universities include the financial return on public investment, the advancement of university mission, and benefits to students. Benefits for authors include professional advancement, financial gain, and recovery on their personal, financial investment.

The overarching concern by university administrators and faculty members is to provide a compelling learning experience for students via state of the art technologies including distance education programs. However, conflicts may develop if universities must enforce copyright policies that interfere with the desire of faculty members to develop intellectual

products and to pursue academic freedom. At some institutions, the university claims copyright of all web-based material used for distance education. Authors view such a copyright claim by universities as a professional and financial disincentive to produce ATEM, and to be an outdated approach inconsistent with policies used for books. Authors connect ownership of ATEM to their professional advancement and financial reward for work done. Alternatively, a policy that offers authors the copyright for ATEM may conflict with the need of the university to recoup investment in the infrastructure necessary for producing and delivering advanced ATEM, and the need to keep the course material updated.

There are mutual benefits to authors and to universities in designing a copyright framework that protects the interests of the academic system. In general, OSU should recommend short-term measures that can provide incentives to authors using current guidelines and policies, while at the same time, looking to develop long-term plans for larger scale policy revisions. Such a two-staged program for policy revision will increase participation by OSU faculty and staff members in the development of advanced technology teaching materials needed for on-campus and distance education programs. Stimulating the development of ATEM will add to the compelling learning experience at OSU, will enhance revenues to both those who produce the web-based materials and to OSU, and is consistent with the missions of OSU Statewide.

The far-reaching implications of copyright related ATEM are evident from the number of universities, institutes, and associations that have recently revised and/or restated policies. We have reviewed recent reports from a range of sources including:

1. Reports and information specifically from Oregon including:
  1. The report from OUS entitled, Distance Education Policy and Framework 2000 ([Appendix 1](#))
  2. The relevant Oregon Administrative Rules on the issue of copyright ([Appendix 2](#));
  3. The description of the current policies interpreted by Caroline Kerl (Legal Advisor for OSU);
  4. The MOU currently used to provide funds to instructors from the OSU Distance and Continuing Education Program ([Appendix 3](#));
2. A table ([Appendix 4](#)) that surveys the written policies of representative institutions including Washington State University, the University of Indiana, the University of Texas, and the University of Wisconsin;
3. An American Association of University Professors report ([Appendix 5](#)).

## **2. Current OUS and OSU Policies**

2.1. Oregon Administrative Rules and Copyright Policies. The current copyright policy in place at OSU is restrictive and discourages some of our best faculty members from participating in the development of ATEM. The policy regarding the copyright of ATEM at OSU is in line with the policy defined in Oregon Administrative Rules, Section 43, which applies to all OUS institutions ([Appendix 1](#)). In general the current policy specifies that when faculty members produce ATEM, such as web-based products, the copyrights to those products belong to OUS. More specifically, guidelines specify that the OUS retains the rights to all academic and scholarly materials produced by faculty members while employed at OSU. To paraphrase relevant Oregon Administrative Rules regarding copyright policy:

1. The Board reserves the rights to all inventions, educational, and professional materials;
2. Educational and professional materials are those developed when faculty members were employed for producing the material, or were instructed to do so, such as after having signed agreement to produce ATEM with the OSU Distance and Continuing Education Program;
3. Faculty members retain the copyrights for lecture notes, however ATEM are not considered to be lecture notes;
4. Only items produced outside the normal scope of a professors area of academic responsibility are excluded from the above.

Importantly, even though OUS could claim copyright for books written by faculty members, the culture and history is that it does not make such claims. The example of the copyright practice for books is important because ATEM are more like books than other creative products regulated by OAR copyright and patent policies. However, since ATEM are a recent additions to the list of creative products, no culture or history yet exists regarding copyright ownership of these materials.

2.2. Oregon Administrative Rules and Patents Policies. The OUS policy for copyrights differs from those for patents. While current guidelines give copyright ownership to the university, the policy for patents grants the inventors a share of royalties. The Office of Research Technology Transfer at OSU is responsible for implementing OUS policy for inventions, license agreements, and the division of revenues. For example, revenue from patented discoveries and inventions by OSU faculty members is shared between OSU, the inventor, and the inventor's academic department. The Office of Research Technology Transfer at OSU is also responsible for copyright issues including those related to ATEM.

2.3. Difficulties with Current Patent and Copyright Policies. The policy and terms for dividing revenue from inventions were created before the explosion in electronic publishing and delivery of learning outside of the physical classroom. Revenue from ATEM includes tuition and royalties. Should current policy for protecting OUS interests in copyrights associated with the development of ATEM be vigorously enforced, the OUS system would need to provide the personnel necessary for the accounting needed to identify projects producing net royalties. In addition, OSU would be obliged to do an analysis of costs for course creation, marketing, and distribution. Those universities that recover costs must address the concern that costs will be overestimated, or that the proceeds from projects that generate revenue will be used to offset costs for projects that do not.

The development of ATEM and copyright and issues of copyright for intellectual property brings a set of questions related to authorship that are unique and that do not apply to clearly defined educational products, such as books. In some cases, ATEM may be produced by one author. However, in other cases, producing ATEM may involve a whole team of people and span technologies beyond the grasp of any single individual. Each member of such a team, including the instructor(s), artists, programmers, and those involved in developing the delivery system, may be considered an "author" of an element of the project, in some sense, if not law. In addition, authorship of ATEM may evolve through time as new faculty members become involved with ATEM products sustained by universities following a change in staff. A specific set of questions surrounding the unique issues of ATEM includes:

1. Who is/are the author(s)?
2. Do author(s) and OSU share the "rights" of copyright?
3. Which rights do the authors retain?
4. Do author(s) and OSU share in the royalties in a cost recovery method?
5. Can author(s) take the course materials with them when moving?
6. Who is responsible for content if sequential authors and multiple sites are involved?

### **3. Policies at Other Institutions and Associations**

3.1. Using Plans from other Universities. OSU is joining a growing list of universities that are addressing the property rights issues related to intellectual property and the creation of ATEM. A review of policies at other universities may help prevent OSU from "Reinventing the wheel" by literally adopting and implementing an entire, complete policy from specific university. Alternatively, review of other universities may reveal that intellectual property rights policies appropriate for OSU should consist of elements taken from several universities, and include considerations unique to the OSU and the OUS system.

Several state and private universities, including the University of Wisconsin, the University of Texas system, the University of California system, the University of Indiana, and the University of Pennsylvania have created new models of shared ownership of copyrighted materials produced by faculty and staff. Looking across these universities (Table 2), OSU has among the most restrictive policies for administration of intellectual property rights for ATEM. A common feature among universities with advanced intellectual property rights policies and sophisticated programs for delivering ATEM is recognition of joint copyright ownership by the author and the institution, and a fair system for distributing revenue.

3.2. The University of Wisconsin Model. The University of Wisconsin (UW) has intellectual property rights policies that, among the universities reviewed, are attractive to the IPPDE Committee. The UW does not claim property interest in materials that result from the author's pursuit of teaching, research, and scholarly work. Therefore, the UW has no property interests connected to scholarly articles, journal articles, research bulletins, monographs, and books. In addition, the UW does not claim interest in intellectual property in which there is either no university investment, or when investment is minimal.

The UW system does, however exercise its rights and claims when there is substantial university investment in the development of intellectual property. When investment is deemed substantial, the UW negotiates a written agreement with the author to identify the responsibilities, investment, and division of revenue by all parties. The UW also claims copyright ownership when the production of ATEM is the primary purpose of employment. Substantial university investment includes release time for faculty members, direct investment by the university, involvement of university staff, purchase of special equipment for a project, use of multimedia production personnel and facilities, or extraordinary use of computing resources. When university involvement is substantial, the UW negotiates the distribution of revenue with the author in order to recover the institutional investment and to limit the author's share of revenue after the UW cost recovery to 25%. Cost recovery includes funds to support an the staff assigned to negotiate agreements with authors, as well as any other investments that can be assigned to the project.

Aspects of the UW policy for managing intellectual property seem appealing and may be appropriate for OSU, however there are important differences between institutions to consider. The UW campus at Madison has more than 40,000 students, and is the only major university in a state with a population larger than Oregon. The UW has a faculty more than



twice the size of OSU, with a larger vesting in patents and copyrights. The UW developed an extensive distance education program, and the policies for copyright and technology transfer, over the period of many years. The UW system includes an extensive Office of Technology Transfer to manage the business of negotiating patent and copyright agreements with faculty members, negotiating license agreements, estimating the investment made into the development of intellectual products, and marketing patents and copyrights to enhance the revenue stream. The staff needed to implement the UW program has substantial costs, recovered in large part from income going to the university derived from products produced by faculty members. OSU should consider whether to invest in the infrastructure necessary to follow the policy established at the UW, or whether parts of the UW system can be combined with other elements to form a policy that meets our needs.

3.3. The National Education Association. The National Education Association states that intellectual property policies should be negotiated in labor agreements that include mechanisms for binding arbitration. The National Education Association maintains a database with over 500 higher education contracts for two and four-year institutions. When language on patents, copyrights, and royalties are reviewed, the National Education Association recommends:

1. If the research is funded by another agency, the contract or grant for that research determines the distribution of income from the product;
2. If a faculty member invents, writes, or produces a product without the use of campus resources, they should own full rights to the income from that product;
3. If the faculty member uses campus resources, proceeds may either be shared by the author and the institution with splits determined by prior agreement, or the proceeds may be shared until the "fair market value" of the resources has been repaid.
4. The faculty member should own the copyright to their classroom lecture notes, teaching materials, and publications;
5. The administration should not make signing away rights to copyright a condition of employment.

3.4. The Elements of Copyright and Fair Use. The most important trend among universities developing revised copyright policies is breaking the concept of copyright down into its components. When the components of copyright can be identified and separated, they can be either assigned to the author or the university, or the copyright components can be shared by those concerned. The components of copyright include:

1. The right to copy the intellectual product;
2. The right to performance (usually pertaining to music and dance);
3. The right to distribute the intellectual product;
4. The right to make derivatives of the intellectual product;
5. The right to make the intellectual product portable.

Some of the components of copyright are more important to the authors, and some of the components of copyright are more important to universities. The key to dividing the components of copyright is to determine where stakeholders have values and assign the components of copyright, accordingly.

Another trend at universities that have recently revised copyright policies is to address the issue of fairness through the legal mechanisms of "fair use." More specifically, even though the components of copyright may be assigned to either authors or institutions, some uses of intellectual materials fall in the domain of "fair use" and are not bound by copyright restrictions. Issues that fall within the domain of "fair use" of material protected by copyright are complex and require legal analysis. However, intellectual property protected by copyright may be fairly used by others if:

1. The character of the use is not for profit.
2. The nature of the material used is not protected. For example, use of factual content within documents or web sites can not be protected by copyright.
3. The amount or importance of the use is neither the core nor the bulk of the protected information.
4. There is no effect of the use on the market for the copyright owner.

#### **4. Creating Courses for On-Campus use vs Distance Education Use**

4.1. OSU Goals and Commitment in Distance Education. OSU Distance and Continuing Education (DCE) provides an important example of how the current, restrictive copyright policies can potentially impact OSU. CE provides opportunities for higher education to those who can not attend classes as resident students at OSU due to conflicts with either schedule or location. The development of DCE has led to the concept of OSU Statewide, and allowed many students to complete degrees at OSU that otherwise could not. Importantly, the ATEM originally developed for distance learning is becoming an increasingly important component of the curriculum for on-campus students who choose to take web-based courses. Since OSU has sharply increased investment in DCE over the past three years, there exists now a commitment to increasing the number of students with access to OSU, and the revenue generated. If OSU and OUS copyright policies are restrictive, faculty members may elect not to participate in the development of distance education.

The need for DCE to generate self-supporting revenue sets it apart from traditional academic departments at OSU. Distance and Continuing Education must generate the revenue necessary to cover costs with the larger goal of contributing revenue to the OSU general budget. Revenue exists in the form of tuition and royalties that might come from ATEM. Costs for DCE include those for administration of its courses, degrees, and other outreach initiatives. In addition, DCEP has created a grant program that provides funds and technical assistance to faculty members who will create courses. The practice of providing funds for the development of distance delivery courses goes beyond the institutional investment normally made for the development of resident, on-campus courses. Rationale for such investment is that ATEM development funds can help provide graphics, programming, and web-design assistance allowing faculty members to efficiently produce courses. Similarly, OSU has invested in the hardware, delivery systems, and the infrastructure needed to recruit, advise, and administer a rapidly growing number of students taking a rapidly developing number of courses.

The future success of distance education requires recruiting large numbers of the best

faculty members from all academic units in order to meet the goals for growth. OSU could attract faculty member involvement in distance education by giving authors copyright ownership. In so doing, OSU would provide incentives for faculty members to participate in the development of ATEM necessary for an expanding distance delivery program. Current or future copyright policies in which OSU claims revenue from ATEM produced by faculty members provides disincentive to participate.

4.2. Memorandum of Understanding. A Memorandum of Understanding is used to clarify the terms in which DCE provides funds and resources, in exchange for the effort by a faculty member to produce a web based course (Appendix 3). The mechanism for acquiring funding for the development of distance education courses is for faculty members to submit a proposal, and upon acceptance, to sign a Memorandum of Understanding. The MOU stipulates the terms of the funding, including the title and number of the proposed course; a budget for labor, faculty members release time, and other expenses; and a schedule for delivering and teaching the course.

The MOU also defines the ownership of copyright, which as stated in OAR, Section 43, resides with OSU. The restrictive copyright policy from OUS makes it difficult to recruit the faculty members needed to create web-based courses that constitute a well-rounded curriculum, and allows distance education students opportunities to complete their degree. Attempts to broaden the copyright ownership statement in the MOU, and to extend some copyright ownership to the author, stretch current OUS guidelines. The current version of the MOU authorizes use of materials created by a faculty member that do not compete with use by OSU. Until substantial changes in copyright policy is made for ATEM, it will be difficult to recruit professors necessary to fully develop the distance education programs envisioned at OSU.

## **5. Comparing Work for Hire to Creating Intellectual Property**

The policies regulating copyright issues for products created by work for hire differ from policies applied to the creation of intellectual property. The intent of current OUS policy is to claim the rights to all educational and professional materials that result from instruction, research, or public service by those employed. Such rights are ensured by signature of faculty members and other staff members at the time of hiring, as a condition of employment. In the broadest sense, all work created by faculty members could be viewed as work for hire. More specifically, since most professors are hired to teach as part of their job description, copyright to all teaching related materials produced beyond lecture notes could be claimed by OUS. Since faculty members are salaried, and not paid by hourly wage, even work produced at home that is related to a professor's teaching mission could be construed under current copyright policy as work for hire and property of OUS.

There are, however, important differences between hiring a person to produce a specific component of an ATEM product, and a person who creates intellectual property. In a work for hire situation, a person is hired to create a specific product, often under the direction of the another with a clear vision of the product and how it connects to the larger issues of emerging concepts, techniques, and disciplines. In work for hire settings, the copyright may not belong to the person who guided to create the artwork for the web site, but rather to the person(s) who created the larger vision and who is responsible for conceiving of the intellectual property. Importantly, for person(s) to be assigned the copyright for an intellectual product, they must show more than simply a vague notion of a book, film, or web site, and must play an active role and make an intellectual investment in developing the product. In some cases it may be difficult to identify the legitimate copyright owners, just as it can be difficult to decide on authorship in articles and books. When teams of

faculty and staff members are jointly involved in course design, development of software, graphics design, installation of sound, and the organization of an ATEM, the staff may have legitimate claims to a share of copyright. A fundamental condition of fairness is that those employed in a work for hire framework must receive just compensation for their work, even if they are not included in the copyright.

## **6. Explore and Recommend Models for Royalty Distribution**

Those who comprise the entity of OSU include those who create ATEM, and our fates are sealed, together. OSU is comprised of many people working to improve higher education. The capacity for OSU to successfully attract faculty members and students to its campus, and to develop the Distance and Continuing Education Programs, will be only as strong as the content of the offered courses. Similarly, as the academic programs at OSU improve, the ability for those creating web-based courses to attract students and to create a market for the course also improves.

A large number of universities and associations are proposing changes to existing copyright policies for intellectual products to meet the needs of students, faculty members, and institutions. The challenge for each institution is to create a copyright policy that is based upon fairness. One need is to determine whether those who create academic products while employed by universities are fairly compensated and rewarded for their intellectual work. The other need is to protect the university interests, investments, and resources. As the financial stakes for the development of ATEM increase, pressures to develop improved models for copyright and revenue distribution will increase. For example, institutions of higher education that previously asserted no ownership claim to scholarly books may begin rethinking their policies on intellectual property rights, and how these rights apply to books as well as ATEM. In addition, the issue of incentives to faculty and fairness may go beyond royalty distribution and extend to the distribution of tuition between the university and faculty members.

The views related to intellectual property, ownership, copyright, compensation, and division of royalties differ even within this committee. But all committee members agree that the current OUS policy is inadequate, and suggest that a revision of the intellectual property and copyright policies is needed. Such a change is necessary to address the issues of fairness, and to create a simple set of uniform and consistent guidelines for treating the issues of patents and inventions, and the ownership of copyrights for books, artwork, and advanced technology educational materials.

## **7. Proposed Policy Revisions**

Our committee is unanimous in the opinion that OUS intellectual property and copyright policies have not kept pace with the development of intellectual property emerging from new technologies. The interests of OSU are best served if copyright policies are modified to promote faculty involvement in the development of ATEM. There are a number of issues that involve revenue, fairness issues, and legal requirements that pose challenges for policy development. Creating a fair, flexible, and comprehensive intellectual copyright policy will be beneficial for all, and will spur the development of ATEM necessary for expansion of distance education. Developing and delivering distance education offerings will lead to further improvements in the accessibility of an OSU education to students, benefit faculty members, and further the development of OSU in the arena of high technology.

7.1. Immediate Policy Changes. The immediate need is to identify actions at OSU that can be implemented now in order to further encourage and develop advanced technology

educational materials. Such recommendations must fall within current OUS and OSU guidelines, fit within existing resources, and provide improved position for shaping long-term policy changes. Following our review, we recommend:

1. The MOU currently used by Distance and Continuing Education lies within the boundaries of current OAR and OUS policies and should be utilized as the university-wide policy, but only until more appropriate means are developed to structure agreements between OSU faculty members and the Office of Technology Transfer.
2. The Office of Technology Transfer at OSU should evaluate the additional staff and resources necessary to take the expanded role of negotiating copyright agreements with faculty members. Estimates of resources needed should be based on projected numbers of faculty members involved in producing courses needed for distance education, the numbers of courses likely to be involved, the costs of the courses, and the number of anticipated agreements to be negotiated with individual faculty members. OSU should provide resources including budget and staff necessary for the Office of Technology Transfer to estimate the costs for making the needed estimate.
3. Distance and Continuing Education at OSU should evaluate the potential revenue stream from royalties and tuition that could be generated from anticipated growth of ATEM used in distance education. Evaluating the revenue stream is necessary to determine whether the issues surrounding the distribution of royalties and tuition are real or imagined. The estimate of the potential revenue streams should consider for a range of development scenarios, compare the projected revenue streams to those of a university considered successful in distance education arena, and provide evidence of sustainability for revenue streams. OSU should provide resources including budget and staff necessary for Distance and Continuing Education to make the needed estimate.
4. The Technology Transfer Program and Distance and Continuing Education should design a business plan for ATEM within distance education. The business plan should show the potential for costs, return on investment, payback period expected, and define the potential for OSU develop a prominent market share in the field of using ATEM in distance education.
5. OSU should form an Intellectual Property Rights Task Force. The Task Force should include the Provost and Executive Vice President, the Dean of Distance and Continuing Education, the Director of the Office of Technology Exchange, Vice Provost for Information Services, the Faculty Senate President, and representatives of the faculty appointed by the Faculty Senate President. The Task Force could appoint Work Groups assigned specific, necessary tasks necessary for the formation of policy and for decision-making. The Task Force would be responsible for designing the approach for changing copyright policies that protect the interests of faculty members and allow the University to develop distance education with adequate scope and scale to meet financial and educational goals. More specifically the Task Force responsibilities would include:
  - a. Continuing design of policy changes that can be immediately implemented;
  - b. Extending the intellectual property rights discussion to involve those at other universities in OUS;
  - c. Hearing any disagreements regarding issues surrounding intellectual property rights;

- d. Evaluating the components of copyright ownership to determine how they might be separated to the mutual benefit of faculty members, students, and the institution;
- e. Developing an approach and timeline needed to bring long-term changes in OUS policy that will involve those from OSU, other universities in Oregon, and OUS.

7.2. The Long-Term Needs. Oregon State University is in a position to act with the other OUS universities to pioneer intellectual property right policies for advanced technology educational materials. In addition, OSU is positioned to take a leading role in the statewide effort to create an intellectual property rights policy that is innovative and fair to all those in the OUS system. A large change in the OSU policies regarding intellectual property rights will require revision of OUS policies, which is a daunting task. Revising OUS policies will involve complex issues, a large number of people from OUS institutions, and eventually the modification of Oregon Administrative Rules established by the Oregon Legislature. A set of long-term needs includes:

- a. Establishing clear boundaries that define instructional materials eligible for copyright;
- b. Developing a comprehensive, inclusive, and flexible outline of ownership interests that address the issues of authorship, sequential authorship, responsibility for update and accuracy, mobility concerns, and issues of liability;
- c. Specifying guidelines for developing contracts between the university and faculty.
- d. Designing a flexible mechanism that allows OSU and OUS to clearly communicate faculty rights and responsibilities in the matter of intellectual property rights;
- e. Providing a flexible mechanism that allows universities to address their own, specific guidelines regarding intellectual property rights without having to initiate wholesale actions at all levels throughout OUS;

## 8. Acknowledgments

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**Appendix 1.** An OUS report, *Distance Education Policy and Framework 2000*

**Appendix 2.** Oregon Administrative Rules relevant to intellectual copyright issues.

The present OSU policy is defined for all institutions within the Oregon University System by the Oregon Administrative Rules, Chapter 580, Division 43 - Board of Higher Education. OAR, Chapter 580, Division 43 stipulates:

"Policies relating to inventions, license agreements, educational and professional materials development, patents, and copyrights.

The policy goal. 580-43-006. The educational and research activities of employees of the Board of Higher Education and its institutions frequently result in the discovery of new knowledge in the form of invention, technological improvements, and the production of educational and professional materials. It shall be the general policy of the Board that such

results be made available to the public in the most expeditious manner.

The Intent. 580-43-007. It is the Board's intent to provide systematic means of bringing inventions, technological improvements, and educational and professional materials into the public domain;

Encourage the development of new knowledge while protecting traditional academic freedom of employees in the publication of materials, development of inventions, and discovery of technological improvements;

Establish principles and procedures for equitable sharing net royalty income with employees, and with sponsoring agencies when required by an agreement.

Employee Responsibilities and Rights. 580-43-011.

1. As a condition of employment, all Board and institution employees shall agree to assign to the Board rights to:
  - a. Any invention or improvement in technology conceived or developed using institutional facilities, personnel, information, or other resources; and
  - b. Educational and professional materials, whether or not registered for copyright, which result from the instructional, research, or public service activities of the institutions.
2. Employees shall be responsible for disclosing to designated institutional representatives all inventions, technological improvements, and educational and professional materials conceived, developed, and/or produced during the conduct of normal activities.
3. Employees shall be responsible for cooperating and assisting Board and institutional representatives responsible for patenting, licensing, registering for copyright, publishing, and generally assisting public access to new knowledge resulting from employee activities.
4. Employees shall be eligible to share in net royalty income from each invention or separate improvement thereof, an amount not to exceed:
  - . 40% of the first \$50,000, 35% of the next \$50,000, and 30% of all additional net royalty income received by the Board for inventions and technological improvements; and
  - a. 50% of net royalty income from educational and professional materials.
5. For the limited purposes of administering the policies under Division 43, persons acting in the following capacities shall be entitled to the benefits and subject to the responsibilities of said rules: Graduate teaching assistants, graduate teaching fellows, graduate research assistants, and student employees.

**Appendix 3.** MOU from Distance and Continuing Education at OSU

**Appendix 4.** Written policies from representative universities

**Appendix 5.** Recommendations from the American Association of University Professors