

How not to promote open sharing of teaching materials at a university
Open Ed conference, Nov. 2014

The policy

Passed Feb. 2014

Section 1.2:

In order to facilitate collaboration with colleagues and enable Departments to support outstanding teaching, if a UBC Instructor makes his/her Teaching Materials available for use by others, unless that UBC Instructor places restrictions up on the Teaching Materials that he/she shares in accordance with Section 2, UBC may, through its Faculties, Departments and individual Instructors, use, revise, and allow other UBC Instructors to use and revise the Teaching Materials to facilitate ongoing offerings of Credit Courses. The contribution of all UBC Instructors to the development of such Teaching Materials will be acknowledged in accordance with accepted scholarly standards unless the UBC Instructors advise UBC, at any time, that they do not wish such acknowledgement.

Copyright

Sharing materials does not imply any transfer in the ownership of copyright by UBC Instructors. Nothing in this policy transfers the ownership of any Teaching Materials to UBC.

How to opt out

1. FA suggests notice: **©Your Name. Not to be copied, used, or revised without explicit written permission from the copyright owner.**

2. Register on Policy 81 site by filling out a Use of Teaching Materials Form

- New one for each course, but don't have to do new one each time teach it
- Can see those who have registered, so know if you can't use their materials; but only for the current term (point?)

Why?

Preamble:

UBC recognizes that as a result of the academic tradition of sharing and collaboration prevalent within the UBC community, many UBC Instructors have access to shared teaching materials, yet it is not always clear how those materials may be used. For this reason, this Policy provides a clear

process for UBC Instructors to follow if they wish to share certain materials but also restrict the ability of others to use those materials. This in turn will allow UBC Instructors who have acquired shared materials, to determine if they can utilize those materials in the UBC Credit Courses they instruct.

UBC encourages the free and open distribution of teaching materials beyond the UBC community. To create and preserve knowledge in a way that opens and facilitates the dissemination of knowledge to the world, UBC Instructors are encouraged to utilize Creative Commons licenses, digital repositories and other open access channels to distribute their teaching materials broadly. However, while UBC would like to see more UBC Instructors and other members of the UBC community distribute their teaching materials freely, this Policy does not require, nor automate, the deposit of teaching materials in any repository. Rather, this Policy intends to clarify the extent to which UBC Instructors can use teaching materials that have been shared by other members of the UBC community such as printed materials provided by other instructors, materials posted to public websites, and materials voluntarily submitted to open access digital repositories.

Examples

- Team-taught course; using others' essay topics or handouts from year to year
 - Sometimes people have retired—how to get a hold of them?
 - Need to get permission from each of the people on the team?
- Courses that are standardized across a dept; what was created for those in the past
 - Need to get permission from all the people who have created materials for the course?
- Handout written by someone else that I use from year to year w/o asking permission each time

- Probably should be getting written permission each time, which can be a hassle

Broadcast email to UBC fac, March 2014

Four core elements of the policy

1. It confirms that teaching materials are owned by the UBC instructors who create them.
2. It supports, but does not require, sharing and collaboration by enabling UBC instructors to use and revise the teaching materials developed by their UBC colleagues in UBC credit courses **without the administrative burden of seeking and recording explicit permissions.**
3. It encourages, but does not require, UBC instructors to share their teaching materials freely and openly beyond the borders of UBC using open source licensing.
4. It recognizes that, in certain situations, UBC instructors may prefer that their teaching materials not be used across UBC, and therefore enables them to restrict such use.

Why not an opt-in repository?

- Will people really keep things up to date?
- Will have to go through and ask permission each time if they don't

Why not promote open licenses?

- Not enough ppl will do it?

If there is some great need to have these materials shared, that leads people to be wary...

Criticisms

Copyright

Under Canadian copyright law, you don't have to specify restriction on use; the default is that you have to ask permission to use unless a license granting it is supplied.

FA submission, Fall 2013:

Article 1.2 acknowledges that faculty own copyright to material produced during the regular course of employment. Yet, this same article simultaneously truncates this right by granting key powers to the University to usurp this copyright. UBC cannot assume these powers by fiat, but must clearly obtain consent on a piece-by-piece basis from faculty members to alter their customary copyright.

FA grievance, March 2014:

1. The University's Policy 81 is inconsistent with Part 1: Article 14 of the Collective Agreement because it imposes conditions on members of the bargaining unit that restrain members from fully exercising their rights under existing copyright law.

CAUT letter, Feb. 2014

Instructors often share teaching materials, but if others want to reuse these, "the practice everywhere is that they must get the express permission of the materials' creator to do so. That is how intellectual property rights operate in Canada."

Analogy?

Like things that you post through third parties where you keep copyright but you're granting a license to the service to use, copy, modify, re-post, etc.

Terms of service for social media

Twitter:

You retain your rights to any Content you submit, post or display on or through the Services. By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the

right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed).

Tip This license is you authorizing us to make your Tweets available to the rest of the world and to let others do the same.

Facebook:

For content that is covered by intellectual property rights, like photos and videos (IP content), you specifically give us the following permission, subject to your [privacy](#) and [application settings](#): you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License). This IP License ends when you delete your IP content or your account unless your content has been shared with others, and they have not deleted it.

Coursera terms of service

With respect to User Content you submit or otherwise make available in connection with your use of the Site, and subject to the [Privacy Policy](#), you grant Coursera and the Participating Institutions a fully transferable, worldwide, perpetual, royalty-free and non-exclusive license to use, distribute, sublicense, reproduce, modify, adapt, publicly perform and publicly display such User Content.

Idea here:

It's like the university is a kind of 3rd party service

- They contribute to the creation of the teaching materials, pay for the platforms on which you might post them, or the paper on which you print them
- They are making possible the courses you teach—physical rooms, registration, etc.
- So you're granting the university a license to revise and reuse them for for-credit courses (not for other purposes)

Doesn't fully work

- Could create the materials on your own time, post on your own servers
- Could be something you haven't taught at UBC so they didn't provide the services needed to engage in teaching

Opting out of those services

- Can just choose not to use those services
- Can just choose not to share teaching materials—many are
- 91 on registry this term

Opt out

- Was the problem so bad we needed to create an opt-out policy?

- Opt out for every single course, every single term
- Choice not to opt out for a set of teaching materials becomes irrevocable—once they are shared and used, one can't go back and change one's permissions (at least, the policy doesn't make clear how one might do so) (FA grievance)
- Violation of freedom of expression: forced speech b/c have to speak out in order to keep the rights one already has under copyright law.

Blanket opt out by Fac union (April 2014)

“the Faculty Association, as the exclusive bargaining agent for faculty members at the University, hereby issues this notice to the University on behalf of each and every faculty member at the University: Teaching Materials may not be used by the University or by other UBC Instructors as contemplated in Policy 81, in the absence of express permission from individual faculty members to do so”

“The Faculty Association does not object to individual faculty members explicitly making a revocable choice to “opt-in” to the application of Policy 81 to their Teaching Materials.”

Vagueness: Sharing

What mean to make teaching materials available for others to use? Not clear in policy or on policy website

Email from someone at UBC who knows about the policy

- Posting on closed LMS doesn't count
- Giving something to a colleague down the hall: if want to restrict how this is used, put notice on the materials themselves or sign up with registry (unless dept. policies require that you share)
- Posting on public website: this depends on whether you post with a creative commons or some other license restricting use, or post it without restrictions. The instructor owns the IP so the instructor decides how the work can be used.
-

My email back, re: #3

-- so if I don't clarify how I want the materials to be restricted, then they are subject to revision & reuse under the policy?

-- response: policy 81 says that the instructor owns the intellectual property, and you have to “actively and voluntarily share your materials.” If you just post something on a public website that doesn't count (though others outside of UBC may “borrow” it without your permission, of course).

Academic freedom

Wikipedia: “the belief that the freedom of inquiry by faculty members is essential to the mission of the academy as well as the principles of [academia](#), and that scholars should have freedom to teach or communicate ideas or facts (including those that are inconvenient to external political groups or to authorities) without being targeted for repression, job loss, or imprisonment.”

CAUT letter to UBC

“Control over one’s intellectual property is a cornerstone of academic freedom, so that any effective loosening of that control undermines academic freedom.”

UBC response to grievance

“It is not an affront to academic freedom to require that instructors explicitly indicate any use restrictions they wish to place on teaching materials that they decide to share.”

Flexible learning initiative

Concern that this came about around the same time as FLI and having more MOOCs

FLI report: “We are defining flexible learning as any online or blended (combination of online and face-to-face) learning modality in which technology is leveraged either to facilitate classroom interaction or to reduce or change the need for physical access and time in class.”

Rationale for Policy 81 presented to BOG by Provost:

<http://www.facultyassociation.ubc.ca/policy81.php>

On page 2 of the [rationale for Policy 81](#) dated February 4, 2014, the Board of Governors was informed that “The proposed Policy is intended to support the Student Learning Commitment by enabling curricula and pedagogy to be developed and revised to foster an effective and efficient student learning environment and **to support UBC’s commitment to** outstanding teaching and **its Flexible Learning Initiative.**” If you read through the report on the Flexible Learning Initiative, it becomes obvious that the University sees this initiative as a potential revenue generator. Just one example of this can be found on page 5 under the bullet “Growth Learners” which reads “Accordingly one of the challenges for UBC is to explore how it might be able to **re-purpose for this segment some of the content developed for the credit and certification markets.**” In order to support its strategic initiative to generate revenue, the University, through Policy 81, has granted to itself the right to use and revise faculty members’ teaching and learning materials. Unlike the statement in the UBC broadcast email of March 6, 2014 (referenced above), Policy 81 is not simply intended to formally support in policy the rich tradition of collegial sharing for the purposes of pedagogical innovation. The policy is meant to turn the intellectual products of faculty over to the University for its own commercial gains as documented in the Flexible Learning Initiative.

Discussion on FLI report does talk a fair bit about marketing courses to people who are willing to

pay, looking into new business models for assessment, lifetime learning subscriptions

“Practitioner segments are large and generally willing to pay, sometimes with market-imposed professional development obligations.” – need to tap into this market (5)

Current status of the policy

On hold; FA filed grievance, now going through negotiations that they won't go forward with grievance if UBC doesn't enforce the policy.

Email from someone at UBC: we will probably see a newly revised policy in the future.

Damage already done?

My worries

- Distrust of UBC's motives, anger at the policy = not wanting to share with open license b/c allows UBC or other universities to use it
 - Don't want my materials to be available for universities or MOOC providers to use and make money on
 - Does non-commercial apply to a university offering for-credit courses? Who knows?
- More people wanting to hold tightly to their IP because of the way this has been handled
 - **If this is their first introduction to the idea of sharing teaching materials somewhat widely, it has been for many a negative one**
 - **Not getting a positive message about sharing teaching materials, why one might want to do so**
- Who wants to talk about open licensing their materials now?
 - Can't do so without discussing this policy and the worries about it

Talked to a couple of people anecdotally about sharing materials more widely

- One refused to use slides for a lecture, or have the lecture recorded and posted on YouTube for Arts One Open, b/c of the policy
- Another expressed reticence about posting materials publicly due to the policy
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Survey

To see what ppl's reasons might be for not sharing w/open license

To see what the impact of policy 81 might be on those

Not trying to get representative sample

Just getting some of the arguments people are making, to see what the concerns are

First sent to ppl registered as opting out of Policy 81

But also encouraged them to pass on to others

Gave to the two depts./programs I work in

Responses

Number of responses so far: 28

Sent out to: 90 on policy 81 registry, then another 40 or so in the two programs I teach in

1. Do you share your teaching materials?

- 8 no, 20 yes

2. who share with/how?

- New faculty, sessionals, colleagues
- Ppl teaching courses similar to mine
- Online w/o a password (2)

3. why no? (didn't ask why yes, only what they share and with whom)

- put a lot of effort into them; don't want to give them away
- Don't think others should benefit from my work when I have no job security.
 - Ppl at uni don't treat me as a colleague so I don't feel I should be collegial
- Not compensated for the extra time I put in to create materials
 - Indeed, assessed in a problematic way; almost lost contract b/c tchg scores were 4.2 rather than 4.5 (2 out of 40 said I didn't care enough)
 - Not going to share when I am assessed in a ridiculous way
- created an entire new course; Head gave it to someone else who is using all the materials w/o express permission
 - what's to stop the university from taking these course materials, hiring a talking head to record videos, not acknowledging my contribution and firing me?
- never been asked to

4. familiar with idea of keeping copyright but making them available w/open license?

- 5 no; 23 yes

5. given any teaching materials an open license?

- 4 yes, 23 no
- 1: I did at one point, but then got scared when Access Copyright was suing people for violations of copyright; a colleague in dept. got sued. Took everything down.

6. If yes, why?

- CC licenses b/c so many people all around world trying to teach w/few resources. Value of sharing as much knowledge as possible

7. If wouldn't consider doing it, why?

- **My courses are about very current events and quickly go out of date. Don't want name attached to outdated materials I no longer have control over.**
- **My materials often build on those of others; would need to get permission from them.**
- Would only use an open license if all the possible restrictions NC-SA-ND were automatic. [*clearly don't understand how licenses work*]
- Don't think the restrictions you can put on are enough to keep materials from being used for financial gain or keep them from being modified.
- I would, but not in the context of UBC's policy 81
- Maybe, but concerned about employer making money off my work in a way that violates my academic freedom.
- Same as previous question: I put much time and effort into them and don't want to give them away
- Tchg materials often related to research, and publications important.
 - I am happy to share, but not relinquish copyright in any way [*maybe a confusion here as to what "copyright" means?*]
- **Open license doesn't protect your copyright; UBC could still use your course materials to create new courses without you.** [*again, a bit of a misunderstanding of copyright and licensing*] [*this is same person who had course "stolen" from them, above*]
- At least before I get tenure I want to keep control of what I produce, esp. if I get a job at a different university.
- Wouldn't think it necessary; give to people in person whom I trust to use simply as inspiration, not to just appropriate it unaltered.
- **Competition with others for teaching jobs; if I give my materials away and I'm not rehired, I've given my work to someone else to profit from**
- **To me the essence of my teaching is what goes on in the classroom and how I mark student work.**
- **Teaching materials can't really be detached from what goes on in the classroom. They are also a reprint of my value to the university and want that to be non-fungible.**

8. would consider using open license

- Hadn't thought about it before; seems like a good idea
- Just haven't gotten organized to do it yet
- Have no objection to others using teaching materials
- Maybe if I was a regular faculty member

9. have posted materials to public website, whether with open license or not

- 11 yes, 17 no

10. yes

- dept. website, own website, academia.edu
- before LMS, posted publicly; now use lms b/c of convenience (2)
- over 10 years ago dept had its own website with course materials (*apparently not anymore?*)
- post materials online; have gotten permission for some copyrighted materials to do this
 - won't post on LMS b/c fears that UBC might appropriate them if they're there, for profit
 - violate my own copyright but also the agreements I've negotiated

11. no posted on public website

- same reasons as above
- never felt the need, never been asked to
- don't think anyone would be interested; others don't teach in the same way I do
- prefer to know whom I'm giving my materials to
- one person:
 - don't want high school students using your materials when they become teachers in the future
 - no control over how used
 - UBC probably has concern about such materials being made public w/o any profit to them
- Don't even use UBC servers or Connect
 - Posting things online lets students think they can get all they need just by looking at those
 - Robs other students of valuable contributions in collaborative learning

12. familiar with policy 81? All said yes

13. Policy 81 affected your attitude about sharing w/open license?

- 14 yes, 14 no
- of the no's
 - number who already share and still do: 8
 - those didn't share before and still don't: 2
- of the yes's
 - those who are now less willing to share: 8

14. if yes, how

- Policy 81 happening in context of trying to scale up education, which can only do if separate content from the people doing the teaching
 - Was happy to share until started to become clear that UBC interested in harvesting what we do to achieve economies of scale
 - Now deeply suspicious of UBCs administrative priorities
- "Policy 81 is, in my view, a cynical attempt to seize and monetize faculty teaching materials. In particular, the decision to use an opt-out rather than an opt-in approach for "sharing" makes me view the whole thing with extreme suspicion."
 - Will not use LMS; moving all my materials to own site and putting copyright notices on all of them.
- "The policy makes it **much less likely that I'll share my teaching materials now** because the University has attempted to take control of these materials from me"
- "As a result of this policy, **I am distributing fewer materials to my students**; I am unwilling to

give permissions for individuals' requests; I put a copyright notice on syllabi.”

- And UBC had the value of lawyers drafting the policy; most of us don't have that benefit and don't know the legal ramifications of it. My only option is to withdraw, which is to the detriment of my students.
- Suspect UBC will try to monetize materials or lock them down to UBC somehow, so am posting things publicly rather than on the LMS.
- Leaning towards CC-NC; if UBC is going to make money off of MOOCs, I want a piece of that pie. But CC-NC doesn't stop others from using the materials noncommercially.
- Should be opt in rather than opt out.
- Have now put copyright notices on all my materials
 - **Much less likely to share on casual basis with colleagues**
 - Now that they've started trying to get a hold of my IP in teaching materials, fear they'll try to do so even more later.
- **More likely to refrain from sharing with colleagues**, posting materials
 - UBC trying to wrest work w/o compensation and w/o recognition of expertise it takes to create
- Suspect UBC wants to use work in MOOCs or other “'accessible' courses” w/o your involvement
- “**Policy 81 has made me completely unwilling to share any of my teaching material**, since it can be used to make me redundant.”
- “The total insensitivity to faculty concerns about the policy made me more wary than I was.”
- “UBC is no longer an institution of higher learning or a community of scholars. It is a corporation interested in protecting and advertising the "brand" and in making money. UBC cannot be trusted.”

of people who refuse to use LMS b/c of this: 2

15. hasn't affected my attitude

- still happy to share; one concern is that it doesn't require attribution.
 - *[but it does:* The contribution of all UBC Instructors to the development of such Teaching Materials will be acknowledged in accordance with accepted scholarly standards unless the UBC Instructors advise UBC, at any time, that they do not wish such acknowledgement. (1.2)
- think should be opt in rather than opt out, w/benefits of opt in publicized
- one person said they are happy with the idea of different options in open licenses, but are wary of what might happen to their teaching materials that they can't control under policy 81 if they don't opt out of this policy. – *confusion here?*