



UNIVERSITY of
MASSACHUSETTS
W.E.B. Du Bois Library
Amherst, MA 01003-9275

December 3, 2015

Office of the Secretary
Department of Education

Attention:

Sharon Leu
400 Maryland Avenue SW
Room 6W252
Washington, D.C. 20202-5900

Re: Docket IID ED-2015-OS-0105 "Open Licensing Requirement for Direct Grant Programs"

Dear Deputy Director Leu,

We write in support of the Secretary's proposal to require that "all Department grantees awarded direct competitive grant funds openly license to the public all copyrightable intellectual property created with Department grant funds."

The University of Massachusetts Amherst Libraries have been a national leader in developing programs to support the development of open education resources (OERs). Since 2011 we have funded the development of open education resources by over 50 faculty members, affecting more than 9,000 students. These efforts have saved students almost \$1.4 million dollars.

The Secretary proposes to amend the regulations regarding the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in order to require that all Department grantees awarded direct competitive grant funds openly license to the public all copyrightable intellectual property created with Department grant funds. (80 *Federal Register* 67672-67677 (Nov. 3, 2015).)

In 1980, the Department assigned copyright and royalty rights to authors, while retaining a non-exclusive license to disseminate materials. This non-exclusive license was a laudable early effort at establishing what we today call "open access" to research, and built on the enormous success of ERIC, establishing the pre-eminent database of educational literature.

Unfortunately, the commercial evolution of the scholarly journal market has not fully exploited the possibilities of open access content. Scholarly publishers still use bargaining leverage on publication to exert monopoly control over federally-funded publications, rather than, for instance, building services on and around open content. This has hampered the development of the market for these resources, and consequently, even works that are technically publicly available, via, for instance, the Department's non-exclusive license, are under-utilized—harder to discover than they should be, and thus much less likely to be used and built upon.

We thus fully support the Department's proposal to remedy this problem, enhance access to the fruits of its competitively awarded public grants, and, ultimately, enhance development of a market built upon upstream access to openly licensed materials.

Potential Costs and Benefits

We are not concerned about commercial disadvantage discussed at 80 FR 67675. As the Department notes, relatively few products have been developed that could have suffered. More importantly, the commercial educational markets have been developing their own open access products, and learning to develop products that build on openly licensed products. This will actually stimulate a more competitive marketplace, ultimately benefiting the publishers themselves.

The Department does an excellent job of laying out some of the numerous and significant advantages that would come from the proposed regulations (67675).

We note additionally that persons with disabilities are a traditionally under-served market that benefits greatly from openly licensed and public domain materials.

Questions Addressed

We address the specific questions below.

Should the Department require that copyrightable works be openly licensed prior to the end of the grant period as opposed to after the grant period is over? If yes, what impact would this have on the quality of the final product?

We recommend that materials be made available when complete, rather than waiting to the end of the grant period. This would ensure that materials are made available in the most timely fashion. Publication and other hazards of professional life may impose significant delays that would unnecessarily hinder access to useful research and models. We recommend that an audit be conducted at the conclusion of the Grant to ensure (1) that preliminary drafts of

materials made openly available are updated with final drafts of materials, and (2) that materials not previously made openly available are made openly available.

Permitting delay until the end of grant periods effectively creates an embargo on publication, which is not warranted by quality concerns. Quality concerns can be effectively addressed by **labeling** and by **appropriate licensing**. Labeling has proven in numerous fields to be an effective means of addressing concerns about the status of a work. Clearly describing the status of a manuscript as “draft”, “working paper”, “pre-peer review”, etc., both makes the content available and flags to users the current level of review. As shown in physics, economics, social sciences, and numerous other fields hosting pre-print servers such as arXiv, RePec, and SSRN, this enhances scholarly and public access while still enabling review and comment to proceed.

The variety of open access licenses made available by Creative Commons ensures that grantees can appropriately restrict use of such materials. It may be acceptable to provide **open access** only for some works prior to the conclusion of a grant. This is most appropriately decided by the grantees and the Department on a case-by-case basis. For instance, a researcher may wish to disseminate an initial draft of a framework while data is still coming in, hoping to get initial feedback on the work. While the work is in its interim state, a more restrictive license, such as CC-BY-ND-NC, to restrict commercial re-use or derivative works, might be appropriate, to be replaced by a more open license when the work was finalized.

Should the Department include a requirement that grantees distribute copyrightable works created under a direct competitive grant program? If yes, what suggestions do you have on how the Department should implement such a requirement?

We do recommend that the Department include a requirement for distribution, and moreover, that the material be deposited in a permanent repository. We suggest that distribution via the Department of Education’s ERIC database would be acceptable if appropriate for the format. Universities’ institutional repositories should also be acceptable. Grant recipients should be permitted to use a combination of methods if appropriate—for instance, software development may best be made accessible through deposit in a public software repository such as GitHub, while permanent access could be made at the grantee’s institution.

What further activities would increase public knowledge about the materials and resources that are created using the Department’s grant funds and broaden their dissemination?

We believe that participation in open and publicly supported repositories is the best way to ensure full “discoverability” of resources. Research 1 university libraries are already supporting open access to scholarly content and have a long history developing staffing and infrastructure to preserve and provide access to research. For instance, institutional repositories such as University of Massachusetts, Amherst’s, “ScholarWorks” (<http://scholarworks.umass.edu/>) are recognized by open and publicly available search engines such as Google, GoogleScholar, Bing, and DuckDuckGo, as reputable, high-value, and permanent. The “SHARE” initiative, led by academic institutions (<http://www.share-research.org/>), is building on this existing access and reputation, and offers the best hope of ensuring long-term public access to this content. Preservation is being ensured by collaborative initiatives such as HathiTrust (<http://hathitrust.org/>), and participation in projects such as Knowledge Unlatched (<http://www.knowledgeunlatched.org/>) is enabling the creation and open distribution of new works of scholarship.

What technical assistance should the Department provide to grantees to promote broad dissemination of their grant-funded intellectual property?

and

What experiences do you have implementing requirements of open licensing policy with other Federal agencies? Please share your experiences with these different approaches, including lessons learned and recommendations that might be related to this document.

We are responding to these questions together, as they both speak to what we understand to be the challenges in implementing these sorts of policies.

These are excellent questions, and we are pleased that the Department has recognized that grantees may need assistance in understanding and implementing these policies, including technical aspects such as choosing and assigning a Creative Commons license, and ensuring correct metadata is attached to their work.

Grantees at academic institutions usually rely on their information technology departments and librarians, who have been developing resources and support for these policies. For instance, some three dozen university libraries now have copyright attorneys in-house, working to educate campus faculty about licensing and copyright. However, this is not sufficient to meet the needs of all faculty—not

even all faculty in a single department. Grantees not situated in a major university may not have such resources at all. As the flagship public university in Massachusetts, the University of Massachusetts Amherst supports not only our own faculty and staff, but those at many other educational institutions in the state. We routinely encounter faculty who simply do not understand licensing, what “public access” means, how they might begin to provide it, or other technical (and legal) basics.

Accordingly, we recommend that the Department develop a small number of initiatives to support development of institutional infrastructure and outreach programs. These initiatives should support development of educational resources and provide support to grantees in implementation of these requirements.

Conclusion

In conclusion, we fully support the Department’s proposal to require direct competitive grant fund recipients to openly license all copyrightable intellectual property created with Department grant funds.

We thank you for the opportunity to comment on this important proposal, and hope our comments prove helpful. Please feel free to contact us about any of our comments.

Sincerely,

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Copyright and Information Policy Librarian

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