

Quality Assurance

Intellectual Property Rights

Development and sharing of OER

OER-friendly policy

Open Educational Resources

OER POLICY REVIEW AND DEVELOPMENT TOOLKIT

A guide for higher education institutions interested in creating and using Open Educational Resources

February 2012

OER-related policy considerations

Policy-making and review processes

Policy links between OER, ODL and e-Learning

Policy tools and guides

Overview

This toolkit is aimed at higher education stakeholders who are working with Open Educational Resources (OER).

It is designed to help you review your own institutional policy environment and where necessary institute policy changes that will facilitate collaboration and the development and sharing of OER.

The toolkit raises policy questions, and makes suggestions for addressing policy issues. It also provides examples and case studies of policy development and review, and includes sample resources/templates, some of which could be adapted for use in your own institutional context.

The toolkit has the following sections. You can read through them all in sequence or just go straight to the issue that interests you.

1. Purpose of the toolkit (including definition of OER).
2. Policy changes needed for institutions to make more effective use of OER.
3. Student considerations for OER-friendly policy.
4. Staff considerations for OER-friendly policy.
5. Institutional considerations for OER-friendly policy.
6. Government considerations for OER-friendly policy.
7. Quality assurance bodies' and other stakeholders' considerations for OER policy.
8. Policy implications of the use of OER in Open and Distance Learning and e-Learning, including issues related to cross-border provision.
9. Policy tools and guides.
10. *OER Policy Forum*.

Sections 1 and 2 orient you to OER generally and OER-related policy considerations. Section 2 in particular poses key questions and provides answers to kick off involvement with OER policy issues.

Sections 3–7 each contain:

- A summary of key questions/issues.
- Links to an illustrative case study/studies.
- Links to other relevant toolkits.
- Links to examples of OER policy documents that reflect the issues being discussed and/or links to sample resources/templates.

Section 8 provides an overview of the policy links between OER and Open and Distance Learning and e-Learning.

Section 9 provides useful and accessible notes, including illustrative examples, on the processes of policy-making and policy review.

Section 10, *OER Policy Forum*, provides an interactive space in which you can raise questions, make suggestions and/or provide links to other useful policy resources.

1. Purpose of the toolkit

The purpose of this toolkit is to help higher education stakeholders to identify some of the policy implications of a decision to create, adapt and/or use Open Educational Resources (OER).

The toolkit is designed to help you review your own institutional policy environment and where necessary institute policy changes that will facilitate collaboration and the development and sharing of OER.

What are OER?

The concept of Open Educational Resources (OER) describes any educational resources (including curriculum maps, course materials, textbooks, streaming videos, multimedia applications, podcasts, and any other materials that have been designed for use in teaching and learning) that are openly available for use by educators and students, without an accompanying need to pay royalties or licence fees.

Note that 'OER' is not synonymous with online learning or e-Learning; openly licensed content can be produced in any medium: printed text, video, audio or computer-based multimedia.

Who is the toolkit for?

The primary target audience for this space is educational decision-makers at African universities who have the responsibility of reviewing or developing institutional or faculty policy frameworks to facilitate development and sharing of OER.

The toolkit examines critical OER policy-related issues that need to be addressed by, or may be of interest to, a range of stakeholders: students, staff, institutions, government and/or quality assurance bodies and others.

The toolkit will also be of interest to African government representatives, potential partners of OER Africa, researchers interested in OER in Africa and general-interest users.

How does the toolkit work?

Section 2: orients you to OER-related policy issues by posing and answering key overarching questions.

In **Sections 3–7:** by listing the key policy issues in each section, this space helps you gain a quick overview of the policy implications of working with OER. The toolkit then provides further information in the form of illustrative case studies, with questions for reflection and discussion. Links to relevant toolkits and related resources/templates provide practical assistance with working with OER policy.

Section 9 provides information on policy-making and review processes, and includes illustrative examples.

The interactive element of the space, *OER Policy Forum*, provides for discussion and problem-solving around particular challenges that have arisen or may arise.

2. Policy changes needed for institutions to make more effective use of OER

To be effective and sustainable, institutional decisions to harness OER will likely need to be accompanied by review of policies. There are at least four main policy issues:¹

1. *Provision in policy of clarity on Intellectual Property Rights (IPR) and copyright* on works created during the course of employment (or study) and how these may be shared with and used by others.
2. *Human Resource (HR) policy guidelines* regarding whether the creation of certain kinds of work (e.g. learning resources) constitutes part of the job description of staff, and the implications for development, performance management, remuneration and promotion purposes.
3. *Information and Communication Technology (ICT) policy guidelines* regarding access to and use of appropriate software, hardware, the internet and technical support, as well as provision for version control and backup of any storage systems for an institution's educational resources.
4. *Materials development and quality assurance policy guidelines* to ensure appropriate selection, development, quality assurance and copyright clearance of works that may be shared.

A good starting point for consideration of OER is to have clear policies in place regarding *IPR* and *copyright*.

Related toolkits:

- *Copyright and Licensing Toolkit*
<http://www.oerafrica.org/copyright>

A clear policy would, for example, plainly lay out the respective rights of the institution and its employees and sub-contractors, as well as students (who might become involved in the process directly or indirectly through use of some of their assignment materials as examples) regarding intellectual capital. As part of this policy process, it is worth considering the relative merits of creating flexible copyright policies that automatically apply open licences to content unless there are compelling reasons to retain all-rights reserved copyright over those materials. Simultaneously, though, these policies should make it easy for staff to invoke all-rights reserved copyright where this is justified.

In developing curricula and learning resources, educators have always engaged with what is already available – often prescribing existing textbooks and creating reading lists of published articles, for example. Even in distance education institutions with a long history of materials development, it is arguably a rare and strange occurrence to develop completely new materials with no reference to what already exists. The increasing availability of OER widens the scope of what is available, but perhaps more importantly opens greater possibility for *adapting* existing resources for a better fit with local contextual and cultural requirements. At the same time, the availability of OER does away with the need to spend time in lengthy copyright negotiation processes or, failing that, to duplicate development of the same core content.

¹ The content of Section 2 is drawn from Neil Butcher (2011) *A Basic Guide to Open Educational Resources (OER)*. Commonwealth of Learning (COL) and Unesco.

This is usually most effectively and efficiently managed if educators work within a team in which disciplinary expertise is combined with expertise in content sourcing, learning design, resource development, materials licensing and so on. If the new/revised learning resources that emanate from such a process are then shared back with the wider higher education community as OER, the possibility exists for further engagement and refinement in the form of constructive feedback. The end result should be better curricula and better materials, developed more quickly and renewed more often.

It should be clear that employment contracts with the various contributors to the development of new or revised learning resources – from whole programmes down to individual learning objects – should expressly acknowledge the right for the individual contribution to be recognized but also the intention for the final product to be made available under an open licence. Given the marketing potential of learning resources released under the institution's imprint, a policy commitment to clear criteria and robust processes for quality assurance would seem of particular importance.

It is important to stress the hierarchy implied here. Engagement with OER originates from the need to address curriculum requirements within the institution; the development and sharing of new OER is a product of meeting that need and not an end in itself.

Within this context, educational institutions would need to consider and answer the following questions:

1. To what extent do current policies motivate educators to invest at least a portion of their time in ongoing curriculum design, creation of effective teaching and learning environments within courses and programmes, and development of high-quality teaching and learning materials?
2. Does the institution have a defined IPR and copyright policy in place?
3. Do institutional policies and practices reward creation of new materials more highly than adaptation of existing materials? How much is collaboration valued?
4. What is an appropriate starting point for initiating a sharing culture and encouraging movement towards OER publishing?
5. Do staff members understand copyright issues and the different ways in which they can harness openly licensed resources?
6. Are there compelling reasons to retain all-rights reserved copyright over curricula and teaching and learning materials?

1. To what extent do current policies motivate educators to invest at least a portion of their time in ongoing curriculum design, creation of effective teaching and learning environments within courses and programmes, and development of high-quality teaching and learning materials?

Some institutions already have policies that encourage such investments, either through inclusion of these elements in job descriptions, inclusion of these activities in rewards, incentives and promotions policies, and/or appointment of people and units dedicated to these tasks.

While different institutions may wish to incentivize these activities in different ways, according to their specific mission and vision, all would benefit from ensuring that their policies provide structural support to investment of time by educators in these activities, as part of a planned process to improve the quality of teaching and learning.

A policy recognition of and support for the development of curriculum and learning resources in multi-skilled teams should obviate the overload of educational staff, whose primary function would be identifying and quality-assuring existing OER and, where necessary, developing new content.

A policy commitment to the use, adaptation and creation of appropriate OER, in support of ongoing curriculum and materials review cycles, would help to ensure that teaching and learning is seen as a continuing process of renewal.

2. Does the institution have a defined IPR and copyright policy in place?

A good starting point for consideration of OER is to have clear policies in place regarding IPR and copyright.

A clear policy would, for example, plainly lay out the respective rights of the institution and its employees and sub-contractors, as well as students (who might become involved in the process directly or indirectly through use of some of their assignment materials as examples) regarding intellectual capital.

3. Do institutional policies and practices reward creation of new materials more highly than adaptation of existing materials? How much is collaboration valued?

While there is no universal way of dealing with these issues, the reality is that incentive structures often reward individual, rather than collaborative, activity and encourage production of 'new' materials. While there are sometimes good reasons for a staff member to develop materials from scratch, such processes may often duplicate ongoing work taking place in global knowledge networks that are engaged in facilitating increasingly creative forms of collaboration and sharing of information.

The history of development of materials for distance education purposes illustrates clearly that, all other things being equal, collaboration by teams of people producing materials tends to produce higher quality results than individuals working in isolation.

Consequently, it is opportune for educational institutions to think strategically about the extent to which their policies, practices and institutional cultures reward individual endeavour over collaboration. Institutions should also consider how they unintentionally create inefficiencies by valuing, in principle, creation of 'new' materials over adaptation and use of existing materials and content.

As the amount of content freely accessible online proliferates, such approaches to procuring materials increasingly seem unnecessarily wasteful. Thus, there may be merit in ensuring that incentive structures and quality assurance processes make provision for judicious selection, use and adaptation of existing content (particularly that which is openly licensed and hence free to procure), as well as development of new content.

This in no way militates against academic creativity: in fact, the right to adapt materials opens up greater opportunities for creativity than the traditional all-rights reserved form of copyright.

4. *What is an appropriate starting point for initiating a sharing culture and encouraging movement towards OER publishing?*

Historically, educational institutions and educators have often been actively encouraged to protect their intellectual capital closely. Thus, sharing teaching practices, approaches and materials will not necessarily be a common practice. Consequently, inviting colleagues to share materials with one another may be met with resistance and scepticism.

Recognizing that this is a historical legacy of how education has tended to function, it is important to find ways to shift this culture, and to encourage ways of sharing materials that are not threatening to educators. One way that some institutions have begun this has been to encourage educators to share online their lecture notes and/or slide shows used in particular courses. In this way, they do not feel pressurized to develop full-scale programmes – or the equivalent of a textbook. Rather, they are sharing notes they create for their students, in a way that first benefits their current students – as they can access the materials digitally – and then benefits colleagues in their own and other institutions, as their notes may be used and adapted for other purposes.

Lowering the expectation of what constitutes an OER – and not expecting the equivalent of textbooks to be available immediately – may be an important step towards shifting the culture of sharing in education. It is often worth pointing out that such resources openly shared will reach a far wider audience, creating far greater opportunities for recognition of staff as productive knowledge workers.

Similarly, institutions may require that all formal assessments for courses are published as OER. This would mean that a repository of tests, problems sets, assignments, essay questions and examinations would be available under open licenses. Like lecture notes, assessments are something that educators have to create as part of their job functions. There is little additional work required to publish these under open licence. However, the contribution to the institution, as well as to the educational community, could be significant. Release of this would also force educators to invest in ongoing redesign of assessment strategies, thus keeping assessment practices current and helping to reduce plagiarism (because the temptation of teaching staff to reuse old assessment activities would be reduced – given that such activities would be openly accessible).

5. *Do staff members understand copyright issues and the different ways in which they can harness openly licensed resources?*

By virtue of their core functions, educational institutions are positioned to be at the forefront of knowledge societies. In many institutions, though, educators have limited knowledge of or exposure to issues around copyright and the proliferation of online content, much of which is openly licensed. These issues are growing in importance, as they are central to the rapid growth and development of new, increasingly global knowledge networks, driven by the growing functionality and reach of the internet.

These emerging knowledge networks – effectively niche groups of specialized areas of interest sharing and developing knowledge across national boundaries – are complex and diverse, but have become an essential feature of the knowledge economy and of many academic endeavours. This means that educators increasingly need to understand the complex issues surrounding these knowledge networks and how they may be changing the ways in which content is both created and shared.

Accordingly, it is becoming increasingly important for institutions to ensure that they invest in awareness-raising exercises to bring these issues to the attention of their staff and to explore how the institution and the educators can benefit from them.

6. *Are there compelling reasons to retain all-rights reserved copyright over curricula and teaching and learning materials?*

Assuming that institutions have copyright policies that vest the copyright of such materials in the institution, their next consideration may be whether they derive better value from retaining all-rights reserved copyright or from releasing some of the rights.

While a small percentage of teaching and learning materials can – and will continue to – generate revenue through direct sales, the reality has always been that the percentage of teaching and learning materials that have commercial resale value is minimal; it is also declining further as more and more educational material is made freely accessible on the internet.

It is becoming increasingly evident that, on the teaching and learning side, educational institutions that succeed are likely to do so predominantly by understanding that their real potential educational value lies not in content itself (which is increasingly available in large volumes online) but in their ability to guide students effectively through educational resources via well-designed teaching and learning pathways; offer effective support to students (whether that be in practical sessions, tutorials, individual counselling sessions or online); and provide intelligent assessment and critical feedback to students on their performance (ultimately leading to some form of accreditation).

Although it may seem counter-intuitive, therefore, as business models are changed by the presence of ICT, the more other institutions make use of their materials, the more this will serve to build institutional reputation and thereby attract new students.

In this changing environment, there is a strong case to be made for considering the marketing value and added exposure that can be derived from making this intellectual capital easily accessible under open licences, rather than seeking to retain all-rights reserved copyright.

However, as there will be instances in which institutions and academics will need to protect all-rights reserved copyright, it remains important to create provisions in copyright policies to assert full rights over specific materials where this is considered commercially or strategically important.

Having noted this, it is worth adding that a policy that requires staff to justify the assertion of all-rights reserved copyright can help to eliminate the corrupt practice of teaching staff selling their own teaching and learning materials to their students as a separate commercial activity.

3. Student considerations for OER-friendly policy

Key policy questions include:

- Is the development of works such as learning resources or research outputs part of a student's learning contract with the institution?
- What training and support are available to students in the development of such works? Is the use/development of OER encouraged in this process?
- Who owns the copyright in the works produced by students e.g. assignments, research outputs and co-created learning or research resources? What privacy issues are involved?
- Under what conditions can the works created by students be shared with others?

Illustrative case studies:

- *Students: what rights do I have to the works I create?*
- *Students: what if I work for the institution part-time?*

Related toolkits:

- *Copyright and Licensing Toolkit*
<http://www.oerafrica.org/copyright>

Illustrative resources/sample templates:

- Example of student learning contract:
http://www.learningandteaching.info/teaching/learning_contracts.htm
- Example of permission to publish thesis/dissertation as OER
<http://www.oerafrica.org/Portals/32/short-guidelines-for-submission-of-thesis.doc>
- Example of employment contract – part-time materials developer (Appendix 1 of this toolkit)

Students: what rights do I have to the works I create?

Read the case study below and think about the questions that follow.

Jabu, Khani and Cynthia are all students at Africa University. Jabu was thrilled when he successfully completed his Masters dissertation and it was posted on the institutional research publications website. He was able to refer interested friends and family to his first publication. By contrast, Khani was mortified when he received a set of generic online feedback on an assignment and saw that his assignment had been cited as an example of a poor response. Although his name was not mentioned, it was clear from content included in the assignment that it was his work, and his immediate peers would have been able to recognize that this was the case. By contrast again, another student in Khani's online 'class', Cynthia, was upset that her work had been cited as excellent but had not been credited to her: she felt that weak or lazy students would now be able simply to copy her work and not even credit their source.

Questions to think about:

1. Do you think students' work should be available for review by people other than institutional staff? If so, under what circumstances? If not, why not?
2. What is the policy of your institution on sharing student work? Note that it is usually a requirement that successful Masters and doctoral dissertations/theses be available in the public realm. What are the implications of this for privacy, permissions and ethics with respect to both the student-researcher and the subjects of his/her research?
3. What information about students should be available and to whom? For example, should funders have access to student assessment records for students receiving bursaries? What are the privacy issues involved? What is the practice at your institution?

Students: what if I work for the institution part-time?

Read the case study below and think about the questions that follow.

Mpho, a graphics design student, was employed during the university vacation to help with the final production of online study materials for the following semester. In addition to helping with the re-presentation of the course materials in a Moodle format, she also created a number of original graphics. Mpho was proud of what she had done and showed her work to a friend, who was studying at a different university. Her friend in turn showed Mpho's work to his lecturer who was so impressed that he contacted Mpho to ask whether he could pay her a royalty to use the original graphics in his own teaching programme.

Questions to think about:

1. How would you respond to this request if you were Mpho?
2. The case study illustrates the reason why paid work should be subject to a clear contract in writing, which spells out the respective rights of different parties with regard to commissioned works. If you have done work for your university and have a copy of a contract, check the conditions to see what rights you and the university have over the works that you produce.

4. Staff considerations for OER-friendly policy

Key policy questions include:

- Is the development of works such as learning resources, research outputs and reports stated in staff employment contracts?
- What training and support are available to staff in the development of these works? Is the use/development of OER encouraged in this process?
- Who owns the copyright in the works produced by staff?
- Under what conditions can the works created by staff be shared with others?

Illustrative case studies:

- *Staff: what rights do I have to the works I create?*
- *Staff: prescribing texts – an ethical challenge*

Related toolkits:

- *Copyright and Licensing Toolkit*
<http://www.oerafrica.org/copyright>
- *Materials Development Toolkit*
<http://www.oerafrica.org/materialsdev>

Illustrative resources/sample templates:

- Example of employment contract – full-time academic
<http://www.open.ac.uk/foi/eer/pics/d17308.pdf>
- Example of employment contract – part-time materials developer (Appendix 1 of this toolkit)

Staff: what rights do I have to the works I create?

Consider the following scenario, which is based on a 2009 court case in South Africa. (Adapted from *Sunday Times*, 22/03/09. The names and context have been changed.)

The Supreme Court of Appeal has dismissed an appeal by a former employee of the Higher Education Institute of Africa who, after his employment contract was terminated, tried to prevent the institution from using software he had developed while in its employ.

The court found that, although the employee remained the author of the work, ownership of copyright remained with the employer.

The court held that ‘in the course of employment’ was the determining factor in who owns copyright, whether the software was developed within working hours or not.

James Green was employed by the Higher Education Institute of Africa, for more than 12 years. Initially employed as a technician, he eventually became the head of the ICT

Department. During the last five years of his employment, Green wrote a number of computer programs in his own time, at home, to help him perform his duties. Over time, Green's colleagues in various faculties and in partner institutions began to use the programs.

Green tested the software during business hours and implemented it at the office.

Green claimed that it was never an express requirement in any of his job descriptions to develop computer programs, yet he had over the years prepared numerous reports in which he detailed the performance of his duties of which a major component, on his own estimation, was programming.

A dispute arose concerning the course codes of computer programs developed by Green, which he refused to hand over to the institution. Green was suspended and disciplinary action was taken on the grounds of insubordination. He was subsequently found guilty at the disciplinary hearing and dismissed.

Green then sought to enforce a copyright claim for the programs.

In reaching its conclusion, the court insisted that three guidelines be taken into account: the particular facts of the matter; the terms of the employment contract; and the circumstances in which the work was created.

The court dismissed Green's appeal on the basis that ownership of the copyright in the computer programs vested in the institution as they were created in the course of his employment with them.

The court also took into account the fact that the institution prescribed the format of the programs and had to approve them before they were implemented and used.

Green spent increasingly more of his office hours developing programs, to such an extent that he failed to give sufficient attention to his duties as head of the ICT unit.

In terms of the judgment, there can now be no doubt that a work may be created in the course of employment without having been created in terms of the contract.

In addition, the scope of employment may change explicitly or by implication. The fact of each matter will be critical in deciding whether work was created in the course of an employee's employment.

This case raises interesting questions for institutions wishing to make more systematic use of OER.

Some of these questions could be:

1. Who owns the works created by staff (or students) – where is this stated?
2. Who is listed as the author for citation purposes – the lead academic, the development team, the institution...?
3. What rights do staff (or students) have in terms of the works they create?
4. Is the development of learning resources part of the job description and time allocation of staff?

5. How are learning resources selected for development, developed and then approved for use in the institution and subsequently for release into the OER community?
6. Where and how are draft and final versions of learning resources, and their constituent elements, stored?

Staff: prescribing texts – an ethical challenge

Read the following case study and think about the questions that follow.

Professor M works for a distance learning institution and has responsibility for several modules. His contract of employment specifically notes that creation of learning materials is part of his job description and the teaching time allocated to him each year involves curriculum renewal, materials updating and developing, providing feedback on assessment, responding to student queries and engaging in ongoing evaluation and improvement.

In a particular year, Prof. M develops a learning guide for students, which forms the core of their study package. While students are engaging with the learning guide, he has the learning guide edited and published externally as a textbook. He then prescribes the textbook for the course in the following year.

Students who register for the following year, including those who are repeating, receive a tutorial letter containing assignments and are directed to purchase the prescribed textbook. The 'module' is offered across several programmes and the same tutorial letter and assignments and prescribed textbook apply in each case.

This case study, based on actual experience, raises a number of questions that a robust policy framework should help to address.

The following questions occurred to us, but you may be able to think of others:

1. Is the development of learning resources of any kind part of the formal job description of staff?
 - 1.1. If yes, what rights should staff have over the adaptation and use of these resources for other contexts, including commercial publishing?
 - 1.2. If no, how is the curriculum mediated and how do staff ensure equivalence of provision for growing numbers of students?
2. How are prescribed resources that students need to buy separately from the payment of their study fees, approved? What is an appropriate process for selecting prescribed texts that students must purchase?
3. What could be considered the minimum requirements for a distance learning study package?
4. To what extent should we expect shared resources to be adapted for use in different contexts and programmes?

5. Institutional considerations for OER-friendly policy

Key policy questions include:

- Does institutional policy provide clarity on IPR and copyright on works created during the course of employment (or study) and how these may be shared with others e.g. partner institutions?
- Does HR policy provide guidance regarding whether or not the creation of certain kinds of work – e.g. learning resources – constitutes part of the job description of staff, and are the implications of this for development, performance management, remuneration and promotion purposes clearly stipulated?
- Does the institution have ICT policy regarding access to and use of appropriate software, hardware, the internet and technical support? Is provision made for version control and back-up of the repository of institutional works?
- Does the institution have materials development and Quality Assurance (QA) policy guidelines to ensure appropriate selection, development, QA and copyright clearance of works that may be shared?

All policy positions with regard to the above need to be consistent with the vision and mission of the institution.

Illustrative case studies:

- *Institutions: carrying copyright over to third parties*
- See also case studies under **Student** and **Staff** sections.

Related toolkits:

- *Copyright and Licensing Toolkit*
<http://www.oerafrica.org/copyright>
- *Using Technology*
<http://www.oerafrica.org/technology>
- *Materials Development Toolkit*
<http://www.oerafrica.org/materialsdev>

Illustrative resources/sample templates:

- Examples of institutional OER policies:
 - » South African Institute for Distance Education (Saide): *OER Africa*
<http://www.oerafrica.org/Portals/0/2009.07.30.SAIDE-OERPolicy.pdf>
 - » Commonwealth of Learning: *COL's Policy on Open Educational Resources*
<http://www.col.org/progServ/policy/Pages/oer.aspx>
 - » Kwame Nkrumah University of Science and Technology (KNUST): *Policy for Development and Use of Open Educational Resources (OER)*
<http://knust.edu.gh/downloads/20/20411.pdf>

- » University of the Western Cape (UWC): *A Free Content and Free and Open Courseware Implementation Strategy for the University of the Western Cape*
<http://ics.uwc.ac.za/usrfiles/users/8990060109/Strategies/freecourse-0.4.pdf>
- » African Virtual University: *The African Virtual University's Open Education Resources (OER) Policy* http://www.oerafrica.org/Portals/32/AVU_OER_Policy.pdf
- » Open High School of Utah
<http://openhighschool.org/>
- » Massachusetts Institute of Technology: *MIT Faculty Open Access Policy FAQ*
<http://libraries.mit.edu/sites/scholarly/mit-open-access/open-access-at-mit/mit-open-access-policy/mit-faculty-open-access-policy-faq/>
- » Wellcome Trust: *Open Access Policy: Position statement in support of open and unrestricted access to published research*
<http://www.wellcome.ac.uk/About-us/Policy/Spotlight-issues/Open-access/Policy/index.htm>
- Example of licensee conditions: Opencast Projects
<http://opencast.jira.com/wiki/display/MHDOC/License+Information>

Institutions: carrying copyright over to third parties

Read the following case study and think about the questions that follow.

Ms Z was contracted and paid to develop a set of learning resources for a private non-governmental organization. The presentation of the content was substantially edited and it was published under an all-rights reserved copyright licence under the imprint of the organization. At various times, the original writer was contracted and paid to update the materials, and the updated materials were also published in the same manner. With each renewal, the original author expressed the desire to 'publish' the materials and was informed that this would be fine with the organization provided the content was packaged differently and that the materials as published by the organization itself would continue to be supplied to its students. Subsequently the organization entered into an agreement with a third party in which it was agreed that the third party would make use of the materials for its own purposes and pay an annual royalty based on student numbers. The new agreement was between the organization and the third party. However, before any royalties became payable, the non-governmental organization went into liquidation. The original author then sued the third party for the royalties, claiming that no evidence could be produced that she had signed over her rights to the materials to the organization originally and therefore it had no right to sell the rights to the third party. Interestingly, the original author herself had been accused of plagiarism in the development of the materials.

This case study, based on actual experience, raises a number of questions that a robust policy framework should help to address.

The following questions occurred to us, but you may be able to think of others:

1. Do contracts with external materials developers clearly spell out their rights in terms of the materials that they produce under contract, including the possibility of subsequent use and reuse by third parties?
2. In the event of the closure or amalgamation of one party in a multi-party agreement, how are the rights of the various other parties protected?
3. What would have been an appropriate response by the third-party organisation in this case?
4. How might the situation have been different if the original contract had stipulated that on payment for work done all materials would become copyright of the paying institution and released under a Creative Commons Licence 3.0 Unported Attribution Only Licence?

6. Government considerations for OER-friendly policy

Key policy questions include:

- **What policies are in place to ensure that a portion of public spending in education is invested in ongoing curriculum design and creation of effective teaching and learning environments within courses and programmes? This is important in order to provide for the development of high-quality teaching and learning materials to address key national needs.**
- **What Intellectual Property (IP) regimes should govern public investments in public education programmes?**
- **Are government officials aware of the IPR and copyright challenges posed by digitization of content, and the variety of open licences available to help deal with these challenges?**

Illustrative case studies:

- *A national initiative to improve school leadership. Case study and resources on the Teacher Education Space of the OER Africa website.*
http://www.oerafrica.org/teachered_SchoolLeadershipandManagementAdvancedCertificateEducation/tabid/1422/Default.aspx
- *Materials published by government: what rights pertain?*

Related toolkits:

- *Copyright and Licensing Toolkit*
<http://www.oerafrica.org/copyright>

Illustrative resources:

- Examples of national policies:
 - » New Zealand: *New Zealand Government Open Access and Licensing Framework (NZGoal)*
<http://www.e.govt.nz/policy/nzgoal>
 - » Austria – default licensing document: *Rahmenbedingungen für Open Government Data Plattformen (Framework for Open Government Data Platforms)*
http://www.ref.gv.at/uploads/media/OGD_1-0-0_20110928.pdf

Materials published by government: what rights pertain?

Read the case study below and think about the questions that follow.

Country Z develops a set of curriculum support materials for teachers, including curriculum and assessment guidelines and supporting workbooks. All of these materials state ‘© Ministry of Education’. A teacher in Country Y decides that one of the workbooks would be perfect for her own teaching needs. However, she wants to change the names to ones more familiar for her own students, to change the sequence of activities in some places and to add some further material.

Questions to think about:

1. Can the teacher in country Y assume that because she found the workbook on the internet, she can a) print it and use it, and b) make changes to it? Would it make any difference if she charged students/parents for the reworked materials?
2. The default legal position in most countries is that unless otherwise stated all materials are published under an 'all rights reserved' copyright condition. However, in some countries all documents published by government are assumed to be in the public domain. What is the case in your country?

7. Quality assurance bodies' and other stakeholders' considerations for OER policy

Key policy questions include:

- Are QA and accreditation agencies aware of the IPR and copyright challenges posed by digitization of content, and the variety of open licences available to help to deal with these challenges?
- What processes are currently in place to assure the quality of learning materials used in higher education? Do they take into account the wide range of types of learning materials and the different purposes for which – and/or the different contexts in which – they are used?
- In what respects do current policies either encourage or hinder the use of learning materials and in particular any OER?
- What QA and accreditation processes should be introduced to safeguard quality but encourage constructive change through the adoption of OER?
- Can a QA body pronounce on the quality of learning material outside of the context of the course in which it is used?

Illustrative case studies:

- *Can quality assurance be outsourced?*

Related toolkits:

- *Copyright and Licensing Toolkit*
<http://www.oerafrica.org/copyright>

Illustrative resources:

- Examples of national policies:
 - » New Zealand: *New Zealand Government Open Access and Licensing framework (NZGoal)*
<http://www.e.govt.nz/policy/nzgoal>
 - » United States: *The Washington Declaration on Intellectual Property and the Public Interest*
<http://infojustice.org/washington-declaration>

Can quality assurance be outsourced?

Read the case study below and think about the questions that follow.

StudyNow is a private provider of education and training. It has a small core staff and offers e-Learning courses with online tutorial support provided by a number of 'etutors' from places within the country and across international borders. *StudyNow* operates using course materials sourced entirely online. Having identified a need, *StudyNow* staff then try to find appropriate open courses to meet that need: if no suitable courses can be found, then *StudyNow* will not address that need. After a number of years of working informally, *StudyNow* decided to apply for accreditation in its home country. Its request for accreditation to the Quality Assurance Authority (QAA) was turned down on the basis that 'core curriculum resources have been bought in and the institution clearly lacks the academic capacity to provide a quality learning experience'.

Questions to think about:

1. Do you agree with the above assessment by the QAA?
2. What conditions pertain in your own country regarding use of 'bought in' resources in accredited programmes of study?
3. Does use of a prescribed textbook published outside the institution (often outside the country) constitute a 'bought in' resource?
4. How might the QAA concerns best be addressed by *StudyNow*?

8. Policy implications of the use of OER in Open and Distance Learning and e-Learning, including issues related to cross-border provision

Some institutions that are interested in OER are also interested, or already active, in Open and Distance Learning (ODL).

There is a natural synergy between the two, since ODL requires ongoing investment in the development of learning resources. Using OER in the development process should help to shorten the time and reduce the costs of development, while encouraging use of the best quality content available. And sharing Distance Education (DE) resources as OER will help further to open access to quality learning opportunities and will make the differentiating characteristics of ODL institutions the nature and quality of the support services they offer. This should help to improve quality in the learning resources shared as OER and in the DE provision alike.

Increasingly, in both ODL and contact provision, learning resources are conceptualised as *digital* in nature, in the form of:

- Digital versions of text-based resources, such as PDFs.
- More interactive e-Learning resources, often combining text, video and audio, and providing automated feedback using platforms such as Moodle.

The appropriate mix of technologies to be used is a key curriculum decision that needs to be informed by the target student profile, staff profile, the ubiquity and costs of possible technology options and the nature of the required learning.

The following framework has been adapted from Lentell² (2004: 249–259) and Welch & Reed³ (eds) (c.2005) to provide some insight into the possible linkage between ODL and OER.

The table was originally developed to provide feedback to higher education institutions on their existing policy framework.

² Lentell H (2004) Chapter 13: Framing policy for open and distance learning. In H Perraton & H Lentell (eds) *Policy for Open and Distance Learning. World review of distance education and open learning* (Vol. 4). London: RoutledgeFalmer/COL

³ Welch T & Reed Y (c.2005) *Designing and Delivering Distance Education: Quality criteria and case studies from South Africa*. Johannesburg: Nadeosa

Policy area	Policy issues/objectives	Relevance to collaboration and/or OER
Identifying target audience	<ul style="list-style-type: none"> • Educational purpose of the programme • Demography of student population (e.g. age range, gender, employment) • Motivation for learning (e.g. vocational, academic) • Existing knowledge and/or skills of target students (e.g. can study skills be assumed?) • Curriculum needs (e.g. is it defined by an examination or a professional body, academic knowledge, vocational skills?) • Market research 	<ul style="list-style-type: none"> • The sharing of research and templates could facilitate the process of building and then using student profiles at participating institutions.
Type of DE system	<ul style="list-style-type: none"> • Campus-based, organization-based or individual-based? • Self-paced or programme-based? • Open access? • Single, dual-mode or partnership service provider? 	<ul style="list-style-type: none"> • The sharing of research, guidelines, process documents and quality criteria can help an institution make informed decisions about which model(s) of DE will be most appropriate to its needs.
Choosing the appropriate technology for distribution and materials and for interaction with students	<ul style="list-style-type: none"> • Print, audio-visual, web-based or a mix? • Access implications of choice? • Training implications of choice? • Cost – including maintenance and sustainability? 	<ul style="list-style-type: none"> • Open licences for materials will facilitate cost-effective production and distribution of materials. • Access to course materials from other members of the community of practice can be an effective, rapid strategy to secure materials for courses where no materials exist. • This might allow use of media that would not have been affordable if an institution needed to develop everything itself.

Policy area	Policy issues/objectives	Relevance to collaboration and/or OER
Business planning and costing	<ul style="list-style-type: none"> • Philosophy and objectives • Capital and recurrent costs <ul style="list-style-type: none"> » Planning » Implementation » Maintenance and updating » Fixed and variable • Self-financing or subsidised? • Course portfolio (e.g. length of study) • Course development and production process (e.g. team, individual contract) • Course delivery <ul style="list-style-type: none"> » Enrolment » Tutorial system » Materials dispatch » Assessment » Record keeping » Marketing » Funding 	<ul style="list-style-type: none"> • Clear policy indications are needed that materials development is considered important by the institution and that there is commitment to investing in it. • Policy positions are essential to ensure high quality of materials and effective collaboration, and this is indicated by allocation of appropriate resources, including staff time. • It may be necessary to include specific references to collaborative activities to ensure that funds are set aside to cover the time of academic staff from the institution to participate in such collaborative activities. • Sharing of course materials with members of the community of practice may reduce requirements to pay sub-contracting fees for materials development, as it may open access to already developed course materials in key areas of need. • Participation in materials development/OER collaborations could generate consultancy funds, providing an alternative income stream to the institution and its staff and financial returns on capital investment.

Policy area	Policy issues/objectives	Relevance to collaboration and/or OER
HR strategy	<ul style="list-style-type: none"> • Staff complement • Staff development • Staff workload • HR systems 	<ul style="list-style-type: none"> • Most academic staff will be discipline experts rather than materials developers – the wider OER community may be able to help with the development of skills related to materials development. • Staff awareness processes should include awareness about changing intellectual property parameters introduced by the growth of ICT, and accompanying introduction to open licences like the Creative Commons. • Consideration might be given to the notion that staff participating in collaborative activities and materials development exercises that are over and above their normal workload can receive remuneration for their time spent. However, in the long term, if DE provision accelerates, job descriptions will need to be adapted so that time is allocated to programme development, course design and materials production as a core activity.

Policy area	Policy issues/objectives	Relevance to collaboration and/or OER
<p>Programme development, course design and materials production</p>	<ul style="list-style-type: none"> • Buy, make or adapt? • Media choice and/or mix? • Instructional design • Developmental testing • Production • Delivery • Updating • Storage 	<ul style="list-style-type: none"> • Facilitated by use and adaptation of OER. • Facilitated by systematic analysis of current copyright status of existing materials, and efforts to ensure that all materials can be freely updated and revised without securing additional permissions. • Existing OER available on the internet and materials available from other members of the community of practice can support review processes and cost-effective updating of courses. • Establishment of licensing frameworks relevant to digitized materials (e.g. Creative Commons) will be essential, to protect the rights of the institution. • It is essential to define terms of use of all materials within a digital library, which will be facilitated by systematic materials audit and establishment of systems to manage the institution's knowledge base. • Shared course materials and OER can be used to increase the number of available materials in the digital library without significant additional cost. • Collaboration with other members of the community of practice will facilitate such access, as will ongoing integration of the institution into emerging global OER networks.

Policy area	Policy issues/objectives	Relevance to collaboration and/or OER
Tutoring and supporting students	<ul style="list-style-type: none"> • Tutor role and tasks • Tutor skills • Recruiting tutors • Induction and training of tutors • Monitoring tutors • Marking and feedback • Face-to-face, telephone, online tutoring • Student counselling • Student guides and providing information to students 	<ul style="list-style-type: none"> • The sharing of research, guidelines, process documents and quality criteria can help the institution make informed decisions about suitable models for tutoring and supporting its DE/off-campus students.
Recruiting and enrolling students	<ul style="list-style-type: none"> • Making course information available • Marketing • Diagnostic testing of potential students • Briefing students about ODL • Enrolment • Fee payment systems 	<ul style="list-style-type: none"> • The sharing of research, guidelines, process documents and quality criteria can help the institution make informed decisions about suitable models for recruiting and enrolling DE/off-campus students.
Assessing students	<ul style="list-style-type: none"> • Methods to be used (e.g. exams, projects, thesis and portfolio) • Summative, formative or both? • Methods of submission and giving feedback (e.g. online or by paper correspondence?) • Recording marks and student progress 	<ul style="list-style-type: none"> • The sharing of research, guidelines, process documents and quality criteria can help the institution make informed decisions about suitable models for assessing DE/off-campus students.

Policy area	Policy issues/objectives	Relevance to collaboration and/or OER
Managing and administering the DE system	<ul style="list-style-type: none"> • Operational issues e.g.: <ul style="list-style-type: none"> » Finance » Student recruitment » Enquiries processing » Enrolment » Materials development » Materials manufacture » Tuition and support » Assessment » Technology • Governance and management structures 	<ul style="list-style-type: none"> • The sharing of research, guidelines, process documents and quality criteria can help the institution make informed decisions about suitable models for managing and administering its DE system.
Collaborative relationships	<ul style="list-style-type: none"> • Programme development, course design and materials production • Associations • Sub-contractors • Work-integrated learning • Consortia 	<ul style="list-style-type: none"> • The sharing of research, guidelines, process documents and quality criteria can help the institution make informed decisions about suitable models for managing collaborative arrangements.
Monitoring, evaluation and quality assurance	<ul style="list-style-type: none"> • Who the evaluation is for (e.g. politicians, managers, educational staff) • The level of monitoring (e.g. system level, course/programme level, individual tutor or individual student level) • Capability to act on findings of evaluation, monitoring and quality assurance • Quality assurance systems 	<ul style="list-style-type: none"> • Completing a systematic audit of materials and their licences will create a clear legal framework to guide staff and students. • Maintaining proper licences that facilitate use and adaptation of materials further supports this. • The sharing of research, guidelines, process documents and quality criteria can help the institution make informed decisions about suitable models for managing a quality assurance system in a DE context.

Where institutions work independently or collaborate to develop curricula and materials that will be offered or shared across borders, issues of portability, contextualization, language usage and equivalence of experience and support come to the fore.

Illustrative case studies:

- *The Unisa NPDE: working across borders*

Related toolkits:

- *Copyright and Licensing Toolkit*
<http://www.oerafrica.org/copyright>
- *Using Technology*
<http://www.oerafrica.org/technology>
- *Materials Development Toolkit*
<http://www.oerafrica.org/materialsdev>

Illustrative resources:

- Unesco: *Guidelines for Quality Provision in Cross-border Higher Education*
www.unesco.org/education/guidelines_E.indd.pdf
- Unesco/COL: *A Basic Guide to Open Educational Resources*
<http://www.col.org/resources/publications/Pages/detail.aspx?PID=357>

The Unisa NPDE: working across borders**Read the case study and then think about the questions that follow.**

In the year 2000, the then Department of Education in South Africa promulgated a policy document called *Norms and Standards for Educators*. Among other things, this policy document made provision for an interim qualification called a National Professional Diploma in Education (NPDE). The NPDE was aimed at helping serving teachers who had obtained their qualifications in the past to achieve the then minimum expectation of three years of professional development. For new teachers the new norm introduced was a four-year programme of study – either an integrated Bachelor of Education or a three- or four-year undergraduate degree followed by a one-year Post Graduate Certificate in Education. Unisa was approached by a private college in Botswana to enrol a number of private teachers who could not access public professional training in Botswana at that time but who needed also to get to a level of three years of professional training in order to retain their employment. Since the NPDE had been specifically designed for South African students, the Unisa NPDE team worked with its partner institution in Botswana to: source Botswana equivalents of cited curriculum, ministerial and professional policies; adapt assignments to allow for differentiated assessment; and recruit, train, support and monitor local tutors familiar with the teaching context in Botswana. In this way it was possible to offer an *equivalent* but relevant learning experience using the same core learning materials.

Questions to think about:

1. To what extent do the materials/prescribed texts used in existing courses allow for differentiated learning experiences?
2. In the same way that researchers will consider what research has already been done when exploring a research question, so ODL practitioners would typically explore what learning resources already exist to address a curriculum need. Existing resources may then be adopted or adapted, or new resources created, if nothing useful can be found. Increasingly source materials can be found digitally on the internet – but can they be used? What rights typically pertain in your country to resources found on the Web where no specific licence conditions are stipulated?
3. What measures pertain in your institution to guarantee equivalence of experience across a diverse student profile?

9. Policy tools and guides

Notes on policy-making

Planning and setting objectives for an educational institution include drawing up institutional policy for the different management areas (e.g. teaching and learning, research and community engagement, as well as for supporting areas such as governance, management, finance, administration, human resources, estates, ICT and organizational architecture, communication and marketing etc.).⁴

What is policy? In the context of education, a policy is understood as a general plan of action designed to achieve particular institutional objectives. It will normally contain guidelines for the way in which people should exercise their powers and make decisions. A policy also reflects the values that will be taken into account when making decisions.

One of the advantages of having a *robust policy framework* is that it enables decision-making in the numerous instances where we are forced to choose between alternatives that present themselves as challenges.

It is suggested that all who may be affected should be involved in the policy-making process.

The value of *collaborative* policy-making is that it enables all the role-players who are involved in realizing the objectives of the institution to make effective decisions and thus solve problems.

Key steps in the policy-making process include the following:

- Step 1: Formulate the policy.
- Step 2: Get the policy approved.
- Step 3: Release and interpret the policy.
- Step 4: Put the policy into effect.
- Step 5: Keep the policy up to date.

Step 1: Formulate the policy

Start by identifying the intended end results. This will mean asking questions like the following:

- What is the objective of this policy?
- Why is it necessary?
- What will it accomplish?
- What other policies will influence or be influenced by this policy?

You then need to collect all the information related to these questions for the management area under discussion. You can then draw up a tentative outline, discuss alternative courses of action, identify and consult whomever will be affected by the policy, identify and consult whomever will be finally responsible for the end results and ascertain the potential impact of the proposed policy on the institution and the community it serves.

⁴ The notes on policy-making in this section are adapted from Van Deventer (2000) SACTE/UNP.

Step 2: Get the policy approved

Review draft policy for accuracy, brevity and completeness. Ascertain who should approve it before taking further action and the level of authority required for the final recommendation (e.g. senior management for operational policy, senate for teaching-related policy and usually council for overall approval).

Step 3: Release and interpret the policy

Time the release and manner of release and ensure that every affected party is aware of and has access to the approved policy document (e.g. on the staff intranet). Ascertain the 'ground rules' for the day-to-day administration of the policy and who administers exceptions to the policy i.e. develop a related set of policy procedures.

Step 4: Put the policy into effect

Designate responsibility, accountability and authority for putting the policy into effect and clarifying administrative controls: who is accountable for the controls established by the policy?

Step 5: Keep the policy up to date

Establish a timeframe for policy review. Then review, evaluate and report the results of carrying out the policy. Ascertain if there is/was any resistance, and where and why, and take remedial action where necessary.

Notes on the OER policy review process**1. Evaluate the policy framework of the institution**

In evaluating the policy framework of an institution, the following steps may be useful:

- Explain the purpose of the policy review.
- Collect information about the mission, strategic plans, teaching and learning, and HR and ICT policies and procedures.
- Establish the context and indicate whether the vision, mission and strategic planning are collaboration- and OER-'friendly'.
- Identify challenges and opportunities.

Here is an example of the findings of a panel that followed the above steps to evaluate the policy framework of an institution (in relation to health OER in this instance). In brackets after the challenges listed in the first column you will see reference to the institutional policy document(s) relevant to that finding:

Challenge	Relevance to collaboration and/or OER
Curriculum/course materials challenges	
<ul style="list-style-type: none"> The panel found that in some departments the curriculum had not been reviewed for many years (2b) – Visitation Report, Executive Summary). Concerning graduate study, the panel recommends: an urgent review of graduate programmes by departments for relevance and breadth of courses... (2d) – Visitation Report, Executive Summary). ...Library...collection of books...is inadequate... (Council Statement, Infrastructure and Resources p. viii). 	<ul style="list-style-type: none"> Development of new courses can be accelerated through collaborative processes, sharing of course materials and harnessing of existing OER – which is an objective of health OER. Systematic auditing and re-licensing of materials can serve as a vehicle to monitor relevance of curricula and study materials. Existing OER libraries can be made available locally and updated regularly without incurring licensing/acquisition costs.
<ul style="list-style-type: none"> The panel found blurred inter-faculty & inter-departmental linkages, with duplication of activities (CSP p. 13). The panel found inadequate and uncoordinated ICT characterized by low access and utilization (CSP p. 13). There was inability to admit all qualified applicants (CSP p. 13). There was inadequate funding for research, partly attributable to poor marketing of research projects and weak proposal-writing skills (CSP p. 14). 	<ul style="list-style-type: none"> Policy review provides an opportunity to be responsive to Mission – promote innovation, and relevant and cutting-edge technology – by taking cognisance of the changing realities of IP management in a digital age. The creation of institution-wide policies around OER provides an excellent opportunity to introduce new systems for more effective management of institutional resources (human & material) as well as its IP.

Challenge	Relevance to collaboration and/or OER
HR and curriculum/course materials challenges	
<ul style="list-style-type: none"> Ageing faculty, high faculty turnover and the absence of mentoring combine to indicate a crisis in HR supply, which could lead to lowering of output quality... (CSP p. 18). The panel found poor work ethic among some teaching staff coupled with a weak mentoring and supervision system (CSP p. 14). 	<ul style="list-style-type: none"> Staff succession planning demands effective management of intellectual capital. Open licensing frameworks provide simple mechanisms to ensure that, in the long term, institutions have effective access to the products of academic staff's intellectual capital. Imposing a discipline of licensing all materials under an open framework will ensure that knowledge products are stored and tagged on an ongoing basis, thus helping to deal more effectively with staff turnover and induction of new staff.
<ul style="list-style-type: none"> There was lack of formal training in teaching, and poor teaching aids/laboratory equipment (CSP p. 14). Weak recognition and reward systems... (CSP, p. 14). Inadequate funding for research, partly attributable to poor marketing of research projects and weak proposal-writing skills (CSP p. 14). There is a need to 'do more with less' by rethinking assumptions about delivery systems, curriculum, organizational structures and personnel (CSP p. 6). 	<ul style="list-style-type: none"> The process of adapting OER can be used to build capacity in materials creation/development and the use of educational materials i.e. instructional design. Access to high-quality materials packages and supplementary materials of multiple media is essential to alleviate workload pressure on overstretched academics. Investment in faculty by the university is critical – OER is not a panacea to structural under-funding.

2. Identify key policy positions

For example: Having analysed some key challenges relevant to OER and collaboration in materials development, it is now possible to explore key policy positions and objectives, in order to assess their relevance.

The following example relates to this process. You will see reference to the specific institutional document(s) pertaining to the policy position/objective in each instance:

Policy position/objective	Relevance to collaboration and/or OER
Curriculum/course materials positions/objectives	
<p>8.6. A digital library – accessible over the internet, operational by June 2009 [Rolling Strategic Plan p. 83].</p>	<ul style="list-style-type: none"> • It is essential to define terms of use of all materials within a digital library, which will be facilitated by systematic materials audit and establishment of systems to manage the institution's knowledge base. • Shared course materials and OER can be used to increase the number of available materials in the digital library without significant additional cost.
<ul style="list-style-type: none"> • 13.7. Study materials regularly digitized [Rolling Strategic Plan p. 84]. • Digitize all the study materials and make CDs [Rolling Strategic Plan p. 64]. 	<ul style="list-style-type: none"> • Establishment of licensing frameworks relevant to digitized materials (e.g. Creative Commons) will be essential to protect rights of the institution.
Financial/HR policy positions/objectives	
<ul style="list-style-type: none"> • Pay writers and reviewers of study materials adequately and promptly based on guaranteed budget from government and student fees [Rolling Strategic Plan p. 60]. • Reduce time for developing study materials by contracting full- and part-time academic staff [Rolling Strategic Plan p. 60]. • In distance education institutions, the major activities of full-time academic staff members are to develop new programmes and review the existing programmes, to develop and review instructional materials, to moderate the work done by part-time academic staff and tutors, and to undertake research and consultancy [Formula for Evaluation of Workload p. 3]. • Definition of teaching for purposes of calculating workload includes: <ul style="list-style-type: none"> » Supplementing existing study materials (once annually – 4 hours per lecture allocated); » Writing scripts for radio broadcasting and other ICT media (where applicable – 6 hours per script allocated) [Formula for Evaluation of Workload p. 4]. 	<ul style="list-style-type: none"> • This is a clear policy indication that materials development is considered important by the institution and that there is commitment to investing in it. • Policy positions are essential to ensure high quality of materials and effective collaboration. • It may be necessary to include specific references to collaborative activities to ensure that funds are set aside to cover the time of academic staff from the institution participating in such collaborative activities. • Sharing of course materials with the African Council for Distance Education (ACDE) members may reduce requirements to pay sub-contracting fees for materials development, as it may open access to already developed course materials in key areas of need.

Policy position/objective	Relevance to collaboration and/or OER
<ul style="list-style-type: none"> University consultancy is work carried out by members of staff acting as employees of the institution. The work carried out may be additional to normal duties for which additional payment over and above the normal salary may be made, or may be part of normal duties for which no additional payment is made [Consultancy Services Policy p. 2]. Enabling staff whose expertise has a commercial value to benefit financially as well as professionally from their external work. This way, the institution will also sustain its operations through increased income generation [Consultancy Services Policy p. 3]. University consultancy shall be contracted through the proposed institutional Consultancy Bureau (CB) and will be given a formal registration number [Consultancy Services Policy p. 5]. As a rule, the institution will retain 20% of the net revenue for university consultancy after deduction of the related declared and approved direct costs [Consultancy Services Policy p. 8]. 	<ul style="list-style-type: none"> Participation in materials development/ OER collaborations could generate consultancy funds, providing an alternative income stream to the university and its staff, and financial returns on capital investment. Consultancy policy provides clear frameworks to ensure that staff participating in collaborative activities and materials development exercises that are over and above their normal workload can receive remuneration for their time spent.
IP issues	
<ul style="list-style-type: none"> There needs to be development of a structured system that forestalls practices of plagiarism, infringement of copyright and other forms of cheating among staff and students [Quality Assurance and Control Policy p. 22]. Copyright: Students are not allowed to copy and paste text, images or graphics from websites that are protected by copyright, without 'proper acknowledgment' or permission of the owner of the IP [ICT Guidelines for Students]. Students should comply with legal and university restrictions regarding plagiarism and the citation of information resources [ICT Guidelines for Students]. 	<ul style="list-style-type: none"> Completing a systematic audit of materials and their licences will create a clear legal framework to guide staff and students. Maintaining proper licences that facilitate use and adaptation of materials further supports this.

3. Identify issues for consideration

For example: Some key issues for consideration emerge from the above review. These are as follows:

1. A policy is clearly required to govern materials development. It will be useful to ensure that it takes account of the above analysis to create a policy environment supportive of collaboration and sharing and to ensure rigour in the management of the university's IP. Some additional observations are worth noting to feed into development of that policy:
 - a. The HR management policy must include references to copyright or IP.
 - b. Workshop feedback suggests that materials development does not explicitly count when considering job re-categorization and promotion, performance-based incentives and letters of recommendation, and this may need attention. It would be useful if performance appraisal could include contributions of OER.
 - c. It is unclear whether job descriptions/employment contracts take account of the need to transfer copyright to the institution.
2. It will be important to include open licences (such as the Creative Commons framework) when organizing and executing training of staff and course writers on copyright issues and plagiarism. This will serve to deepen knowledge of the options available to manage IP effectively.
3. It will be useful for the institution to begin its commitment to sharing resources with others on a limited basis in order to test the potential and explore the policy implications through action research.

10. OER Policy Forum

This interactive space creates the opportunity to engage in a community of practice by raising critical questions and providing links to illustrative examples of best practice.

You might also wish to engage in other discussion forums or access additional OER and ODL-related resources such as those available at the sites listed below:

Institutions/organizations	Website
Open Education/OER Policy Forums	
<p><i>Open Policy Forum</i> This project is trying to promote and enrich the discussion on the policy implications of open education. It is an initiative of the Open Society Institute.</p> <p>It is quite a new initiative and therefore activity is still growing.</p>	http://www.openpolicyforum.net
<p><i>Online Education Database</i> This is a site on which participants submit blogs on a wide variety of topics related to the open education movement including on ICT, information and public policy.</p>	http://www.oedb.org
<p><i>OpenEducationNews</i> This is a site on which participants discuss a wide range of issues relating to open education generally.</p>	http://www.openeducationnews.org
Distance education institutions and organizations	
<p><i>South African Institute for Distance Education (Saide)</i> Saide was formed as an educational trust in July 1992. Its explicit brief is to assist in the reconstruction of education and training in South Africa. It promotes:</p> <ul style="list-style-type: none"> » Open learning principles. » The use of quality distance education methods. » The appropriate use of technology. <p>Saide works closely with policy makers and providers of educational programmes to translate these approaches into practice.</p>	<p>http://www.saide.org.za/ (The website includes guidelines for learning resource development.)</p>

Institutions/organizations	Website
Distance education institutions and organizations	
<p><i>National Association of Distance Education and Open Learning in South Africa (Nadeosa)</i></p> <p>On 2 August 1996, 58 organizations involved in distance education formed an association committed to promoting access to lifelong learning of high quality. Participating institutions included public, private-for-profit and non-governmental organizations. All were united in their belief that distance education methods could play a major role in facing South Africa's enormous educational challenges.</p>	<p>www.nadeosa.org.za</p> <p>(The Nadeosa quality criteria provide useful guidelines for policy statements on design and development of learning resources, human resources and quality assurance.)</p>
<p><i>Commonwealth of Learning (COL)</i></p> <p>The Commonwealth of Learning (COL) is an intergovernmental organization created by Commonwealth Heads of Government to encourage the development and sharing of open learning/distance education knowledge, resources and technologies. COL is helping developing nations improve access to quality education and training. Bringing together some 1.7 billion people of many faiths, races, languages, traditions and levels of economic development, the Commonwealth represents almost a third of the world's population.</p>	<p>www.col.org</p> <p>and</p> <p>www.col.org/progServ/policy/Pages/default.aspx</p> <p>The following emerging <i>policy statements</i> may be found, which could be used to inform institutional policies.</p> <ul style="list-style-type: none"> • Gender • Attachments and conference support • e-Learning • Intellectual property • Research activities • Regional presence and COL's work through regional centres and regional representation • Higher education • Blogging guidelines

Appendix 1- Example of employment contract – part-time materials developer

Contract

between

(hereinafter referred to as the consultant)

and

XXX

(hereinafter referred to as XXX)

Registration No. XXX

This contract is between _____ of _____ and XXX of _____.

It is hereby agreed that the consultant undertakes a consultancy with XXX, upon terms of reference to be agreed with XXX. The consultant nominates _____ to fulfil the terms of this contract on the consultant's behalf with respect to development of the following materials The following conditions will apply:

1. BACKGROUND TO THE PROJECT

It is useful to provide a context illustrating among other things target audience profile, desired learning outcomes and stipulation of the Creative Commons licence.

2. OUTPUTS

The consultant will work on the above project to achieve the following outputs.

Output 1: Module outline.

Output 2: The introductory and first unit of the module.

Output 3: First draft of first half of the module.

Output 4: First full draft of the module.

Output 5: Second full draft of the module.

Output 6: Third full draft of the module.

Output 7: Production-ready final module, according to agreed specifications.

It is important to flag upfront the need for multiple drafts and feedback at key stages. Avoid receiving 300 pages of manuscript that cannot be used.

All drafts must be submitted in the agreed format and must take into account the feedback given.

3. TASKS

The consultant will be expected to:

- Participate fully in the induction workshop of [Date, Time, Place], the team meeting to review the first full draft of the fundamental and the first half draft of the core modules, and the team meeting to review the first full draft of the elective modules.
- Make himself/herself available to receive feedback from the XXX editor on the module outline and the various drafts.
- Develop the module outline in the specified format on the date required.
- Develop the various drafts of the module according to the agreed specifications on the dates required.
- Produce the final module according to agreed specifications and on the dates required.

4. DURATION

This contract is effective from [start date] to [end date].

5. PAYMENT

XXX undertakes to pay the consultant ___ (___) per day excluding VAT for attendance at the induction workshop and the team meetings up to a maximum of ___ (___) days.

In addition, XXX undertakes to pay a maximum of _____ excluding VAT for meeting all the required outputs. This amount is referred to as **T**. In Clause 6, the allocation of **T** for different outputs is specified.

6. CONDITIONS OF PAYMENT

XXX requires the following to be delivered to its offices on disc in the required format by the following dates:

- **Outputs 1 and 2:** Module outline and the introductory and first unit of the module
Date 10%T
- **Output 3:** First draft of first half of the module
Date 20%T
- **Outputs 4 and 5:** First and second full draft of the module
Date 40%T
- **Outputs 6 and 7:** Third full draft of the module and module ready for production
Date 30%T

Payment for the consultancy will be made upon satisfactory completion of each of the above and on receipt of an invoice with VAT included as appropriate. The invoice should itemise dates, work processes and work products for all days worked.

A penalty of 10% of the value of any one of the outputs will be deducted for delivery after 7 (seven) working days of delivery, unless otherwise agreed by the XXX editors.

Development of materials always seems to take longer than expected and planned. It may be necessary to consider building in penalty clauses.

7. PAYE

XXX is obliged to deduct 25% off all fees unless a tax directive to the contrary from the Receiver of Revenue is received.

8. OTHER EXPENSES

XXX will arrange and pay for the consultant's travel and accommodation in _____ when it is required and authorised.

In the event of other expenditure being approved prior to the event, XXX requires the submission of original invoices for reimbursement.

9. COPYRIGHT *(we have highlighted this section because copyright clearance is a critical issue for publishing OER)*

The consultant hereby warrants that all materials submitted in terms of this contract are not subject to any existing copyright conditions, unless otherwise specified. In the case of the latter, the consultant will provide a complete list of any material for which any consent, fee or licence may be required to be obtained from a third party.

The consultant shall disclose to XXX all works eligible for copyright made by the consultant during the course of the consultant carrying out his/her duties in terms of this contract, irrespective of whether such works are made during office hours or otherwise, or were made at the premises of XXX or otherwise, or were made in _____ or otherwise. The ownership of the copyright in such work shall vest in XXX but will be made available under the Creative Commons licence referred to in Clause 1.

XXX shall ensure the consultant will receive due academic recognition in the materials developed.

10. SUB-CONTRACTING

The consultant may not sub-contract the provisions of services in terms of this contract or any part of the services without the written prior approval of XXX. In the event of such permission being given, the consultant remains solely liable for the performance of his/her obligations under this contract.

11. PROHIBITED USE OF INFORMATION

The consultant agrees to hold all confidential or proprietary information or trade secrets in trust and confidence and agrees that it shall be used only for the contemplated purpose and shall not be used for any other purpose or disclosed to any third party.

12. TERMINATION

At the sole discretion of the XXX editors, this contract may be terminated after failure to submit satisfactorily any of the outputs specified in Clause 2. This discretion will be exercised after feedback has been given to the consultant by the XXX editor with an opportunity to remedy the identified defects within a set timeframe.

In addition to any other rights and remedies in addition of law, this agreement may be terminated by giving written notice to the other party who has breached this agreement or defaulted where XXX or the consultant has committed a serious breach of its obligation under this agreement unless such parties rectify the position as far as is reasonably possible, within 30 (thirty) days of receiving notification of the breach of agreement or default. Failure to deliver the outputs within the timeframes stipulated will be considered to be a breach of contract.

13. GENERAL PROVISIONS

13.1 Entire Agreement

This contract supersedes all previous contracts, representations or promises, and sets out all the terms agreed between the parties. Any amendments, variations, additions shall be of no force and effect unless reduced to writing and signed by an authorized signatory of each party.

13.2 Independent Contractor

The consultant understands and accepts that s/he will be working on the project on a contract basis as an independent contractor for his/her own account and is not being appointed or regarded as an agent or employee of XXX.

13.3 Notices

Without prejudice to the right to serve notices by any other means, any notice served under the agreement shall be in writing. For the purpose of this agreement all notices shall be sent to the following addresses, which the parties hereto select as their domicilium citandi et executandi:

XXX
Address

Consultant
Address

13.4 Indemnity

The consultant indemnifies XXX and holds it harmless against all loss or damage, including legal costs, caused to any person by the incompetence, negligence or wilful misconduct of the consultant.

13.5 Force Majeure

In the event that this agreement cannot be performed or its obligations fulfilled for any reason beyond reasonable control of XXX and the consultant, including ill health, war, industrial action, floods, acts of God, then such non-performance or failure to fulfil obligations shall be deemed not to be a breach of this agreement. In the event that this agreement cannot be performed or its obligations fulfilled for any reason beyond the reasonable control of the defaulting parties for a continuous period of one month, then the other party may at its discretion, terminate this agreement by notice in writing at the end of that period. Provided that both parties agree to negotiate, in good faith, an equitable settlement in respect of the work already performed to the date of termination.

Signed at _____

Signed: _____
AAA for XXX

Date: _____

Signed: _____

Date: _____

Consultant

South African Institute for Distance Education - OER Africa (2011). *OER Policy Review and Development Toolkit: A guide for higher education institutions interested in creating and using Open Educational Resources*. Johannesburg: Saide.

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