

## 3.15: Model Contractual Clauses for Requesting Permission from Freelancers/Subcontractors

Naomi Korn and Professor Charles Oppenheim, March 2009

### Context

These contractual clauses can be used to use work produced by freelancers and subcontractors. This resource should be adapted to suit specific requirements. It is based upon resources produced from the HEFCE-produced 'Good practice guidance for senior managers: Intellectual property rights in e-learning programmes'<sup>1</sup> and reused within the JISC-funded Web2Rights project ([www.web2rights.org.uk](http://www.web2rights.org.uk)).

We recommend these clauses be incorporated into any contract signed between the HEI and a contractor. Please customise to suit your specific requirements.

It should be used in consultation with the following resources contained within this toolkit:

- 3.1 Getting Permissions
- 3.2 IPR Risk Assessments

## Model Contractual Clauses for Freelancers and Subcontractors

### Definitions

1. 'Materials' means any materials created within the Institution or created on behalf of the Institution by Students and/or Volunteers.
2. 'IPR' means patents, Trade Marks, trade names, design rights, copyright, confidential information, performers' rights, rights in know-how and other Intellectual Property Rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing, which shall exist anywhere in the world.
3. 'Freelancer' and 'Subcontractor' means an individual or organisation working for the Institution other than under a contract of employment.

### Title to rights

4. All IPR in the Materials conceived or made by the Freelancer in the course of providing the services are assigned to the Institution. Wherever requested to do so by the Institution, the Freelancer and/or Subcontractor will at their own expense execute any and all applications, assignments or other instruments which the Institution deems necessary to give effect hereto.

### Exploitation and income

5. The Institution is free to exploit (whether for financial gain or not) the Materials as it sees fit, including licensing or assigning the IPR in the Materials to third parties, or merging said Materials with other materials created within the Institution or elsewhere.

### Credits

6. The Institution agrees to credit the Freelancer for any significant contribution to the Materials. The Institution shall comply with any request by the Freelancer in writing that his/her name be removed from the Materials where such request is on the grounds that whole or parts of the Materials are out of date or changed in a manner that might damage his/her reputation.
7. The Institution may update or in any other way amend the Materials to suit its requirements. The Institution agrees to consult the Freelancer over any significant amendments without any obligation to be bound by the same in deciding on the final form or content of such amendments.

### Prohibited uses

8. The Freelancer and/or Subcontractor is not permitted to assign or enter into any licence for the exploitation of the Materials. In the event that the Freelancer becomes aware of any third party wishing to exploit the Materials such third party shall be advised by the Freelancer and/or Subcontractor to contact the Institution as the owner of the IPR in the Materials.

### Termination

9. Save as provided herein, all rights and obligations under this agreement shall continue to be in force after the termination of this agreement in respect of all IPR in the Materials originated by the Freelancer during this agreement and shall be binding on his/her representatives.

## Dispute settlement

10. Any dispute between the parties arising out of or in connection with this agreement, except as otherwise provided in this agreement, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties or, failing agreement between the parties within thirty (30) days after a request for a reference is made by either party, **[eg]** nominated on the application of either party by the chairman for the time being of the Bar Council.

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