



Learning and Education Academic Research Network  
*Advancing the Sciences of Teaching and Learning*

December 18, 2015

Sharon Leu  
U.S. Department of Education  
400 Maryland Ave. SW, Room 6W252  
Washington, DC 20202

Dear Ms. Leu,

We are writing to you on behalf of the Learning and Education Academic Research Network (LEARN) to provide comments on the Department's recently released notice of proposed rulemaking (NPRM) regarding open licensing requirements for direct grant programs (Docket ID ED-2015-OS-0105]. Thank you for the opportunity to provide our views on this matter.

LEARN is a coalition comprised of the Deans of more than 20 of the nation's leading education research colleges. The institutions represented are leading the way on critical research to advance the scientific understanding of learning and development. Over the past several years, the faculty and researchers at LEARN member institutions have helped guide major advances in teaching, learning, and behavior, ranging from the impact of new technology to better interventions for students with learning disabilities.

While we, as a coalition, support the goals of the Department's proposed rule – we agree that students and educators across the country should have access to the most effective, research based practices and materials – we have serious concerns about the scope of the proposed regulation. It is important to note that, in keeping with current Department policy, universities apply a wide range of licenses to the copyrightable materials they produce, including, in many cases, open licenses. However, we believe that the “one-size-fits-all” requirement that all copyrightable intellectual property produced either fully or partially with the support of Department of Education grant funds be made available for unrestricted public use poses serious problems for the education research community. Allowing members of the public and other organizations to modify, repurpose, or redistribute copyrightable intellectual property without the consent or compensation of the original creator would have a chilling effect on original research and harm students and educators.

Faculty and researchers at our institutions use scientifically-valid, rigorous research to design and test various interventions, curricula, and professional development tools, among other materials. We believe that protecting this intellectual property is critical to ensuring that it is implemented properly and generates the greatest positive impact for students and educators. Opening copyrightable intellectual material to unrestricted modification and redistribution raises a number of potential issues regarding content and implementation:

1. The potential that changes made to the original, scientifically-valid materials by third parties could make them ineffective or even harmful;
2. The potential harm to researchers whose names are attributed to materials that have been significantly altered without their input or oversight;
3. The potential for confusion among members of the public resulting from multiple versions of the same basic material, some proprietary, some open; and
4. The potential for companies or individuals to appropriate materials and redistribute them at higher cost to consumers.



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In addition to raising the possibility that copyrightable intellectual material could be altered in ways that make it less effective, and potentially making it extremely difficult for researchers to monitor implementation, the NPRM also has potentially serious negative consequences for essential private research funding. In most cases, public grant funding covers only a portion of the cost of research and development, and the rest of the funding must be drawn from private sources; this additional funding is especially critical to late-stage refinement, updates, and distribution of research materials. By eliminating the ability of researchers to pursue exclusive copyright licenses, which enable potential commercialization, this NPRM creates a disincentive for critical private investment. Effectively, this would force grantees to release early-stage, untested materials, which may be less effective, and which runs counter to the ultimate goals of the NPRM.

Lastly, we assume the Department is aware of the ability of institutions of higher education, under 35 USC 212, to retain the rights for copyrightable intellectual material when the development or creation of this material was federally funded. We are unsure how this law interacts with the requirements of the NPRM and would appreciate the Department addressing this interaction as it finalizes this rule.

Given these substantive concerns regarding the potential negative impact of the NPRM on the creation of rigorous, scientifically-valid research materials, we urge the Department to maintain current policy, which effectively balances the importance of providing all students and educators with the most effective tools with the imperative to ensure that research-based educational practices and materials are used in ways that maximize their benefit.

Thank you for the opportunity to comment on this proposed rule, and please do not hesitate to reach out to us if we can be of any assistance as the rule is finalized.

Sincerely,

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