

SREB

*Educational Technology
Cooperative*

An Expectation of Sharing:

*Guidelines for Effective Policies to
Respect, Protect and Increase the
Use of Digital Educational Resources*

March 2010

Southern
Regional
Education
Board

592 10th St. N.W.
Atlanta, GA 30318
(404) 875-9211
www.sreb.org

SCORE Working Group on Digital Content Rights

Dennis Taulbee, general counsel, Kentucky Council on Postsecondary Education
Marie Lasseter, project manager, Board of Regents of the University System of Georgia
Burns Newsome, general counsel, Board of Regents of the University System of Georgia
Ahrash Bissell, executive director, ccLearn
Lila Bailey, general counsel, ccLearn
Phil Moss, SREB consultant
Myk Garn, director, Educational Technology, SREB
Alan Grant, Louisiana Department of Education
Bruce Chaloux, director, Student Access Programs and Services, SREB

This publication was written by the SCORE Working Group on Digital Content Rights. For more information, e-mail edtech@sreb.org or call (404) 875-9211.



This publication is licensed under Creative Commons. For more information on this license, refer to: <http://creativecommons.org/licenses/by/3.0/>.

An Expectation of Sharing:

Guidelines for Effective Policies to Respect, Protect and Increase the Use of Digital Educational Resources

Introduction

Most electronic educational resources created in the last decade by teachers and technology specialists in SREB states cannot be used in the classrooms of teachers outside the narrow groups for which they were originally developed. This is not because these resources are too sophisticated for others to use, because they require elaborate equipment, or because the other teachers who might want to use them need special training.

It is simply because the resources were created without explicit licensing policies giving others **permission** to use them — policies that clearly assign “terms of use” in advance. Without such policies, potential users must assume the copyright holder who owns the material reserves all rights to its use — a default position that the creator of the material may not have desired or intended.

How serious is this problem? It currently freezes thousands of electronic educational resources, created using public funding, from use because they are not sharable. As the resources that state agencies fund or produce continue to grow, significant potential savings will continue to be lost because these resources are not widely shared among all teachers who might benefit from them. The dollars spent on development and the potential for savings already reach into the millions of dollars. For example, through one distance education initiative in Louisiana known as SELECT, the Louisiana Board of Regents has distributed more than \$6.2 million in grants since 1998 to create online programs and courses, likely including hundreds of sharable learning objects developed by dozens of state employees.

Getting copyright (ownership) and licensing (sharing) rights from the beginning of a project is essential to ensure the greatest return on investment for the state. Attention to both copyright and licensing at the time materials are developed can ensure that the owner’s copyright is not infringed while permitting widespread sharing. SREB states should require that electronic educational resources *created with public funding* be licensed to provide as high a level of potential for sharing as possible, both within and outside the state.

State agencies that fund the development of these resources with public funds should require that a common license with standard terms be used for all such resources whenever possible. The terms of the license should be widely distributed, readily available and easily understood. They should encourage developers to establish the most permissive license terms

possible so that others can use the materials. More restrictive licenses or terms — if used at all — should be permitted only for resources that were developed under special conditions or intended for special purposes.

SREB's Educational Technology Cooperative and the SCORE Working Group on Digital Content Rights recommend a set of specific guidelines for increasing the potential for sharing these materials while preserving the rights of owners. The guidelines focus on standard terminology, granting — rather than reserving — rights, and establishing the infrastructure and incentives for sharing.

A Brief History: The Need to Share Grows

SREB's Educational Technology Cooperative recognized the advantages of sharing electronic instructional resources early. In 2004, the Cooperative began the SCORE (Sharable Content Object Repositories for Education) project to advance interstate cooperation in sharing digital (online) resources among SREB states. In 2005, the Cooperative also developed and published guidelines to help education leaders and policy-makers: *Technical Guidelines for Digital Learning Content: Development, Evaluation, Selection, Acquisition and Use*. These guidelines recommended standards for accessibility, portability, usability and reusability in electronic educational resources. At the time these guidelines were developed, licensing issues — which address the sharing of materials — were not yet critical. Today, they are.

SREB States Support Guidelines

In 2009, at the direction of the SCORE Working Group on Digital Content Rights, the Cooperative surveyed all 16 SREB states about sharing their digital educational resources. The survey revealed that: (1) together, the SREB states spend millions of dollars each year on the development of electronic instructional resources; (2) with very few exceptions, how those resources can be shared with other potential users is either unclear or not addressed; and (3) while most states have programs for funding digital resources, few include criteria related to licensing of materials created. In fact, only one in four SREB states has developed or is considering developing state policies or legislation on the licensing of electronic resources produced by state employees or funded by the state. The survey also identified that support for the development of licensing guidelines was strong, with 90 percent of the respondents indicating that such guidelines would be useful in state policy discussions.

Copyright is No Longer Enough

Discussions about who may use a digital resource (and how it may be used) are often confused with concerns about who owns a resource. While *copyright* is the legal acknowledgement of ownership, which is meant to protect “intellectual property,” an owner can also permit or *license* a variety of the uses (and users) for the resource — without relinquishing ownership or copyright.

In the pre-Internet world, copyright was the primary tool developers had to protect their intellectual property from misuse and outright theft. Copyright law protections are founded on the assumption of “all rights reserved,” preventing others from copying, distributing or adapting a work, unless the copyright owner is contacted and grants a license (with the exception of the “fair use” rule, which allows the fair use of material for nonprofit, educational purposes). As a consequence, the legal sharing and reuse of educational resources that traditionally are copyrighted has been dramatically inhibited in most instances. While some individual educators may rely on “fair use” to copy and use such educational resources in a classroom or within a pass-protected Web site, such solutions do not promote sharing digital resources for multiple classrooms — and certainly not among states.

In a Web-based world, something more is needed. Evidence shows that reliance on traditional copyright as the sole tool for managing “digital rights” chills the creativity of educators inside the classroom — and even more so when they contemplate reusing, adapting or sharing resources. As the SREB survey discovered, state agencies realize that they did not retain permission to share resources they have paid to have developed. In giving creators of the materials intellectual property protection, states have foregone the rights to share materials with other state stakeholders. Other potential users of these resources beyond the creators are left uncertain about how to get permissions to republish, reuse, translate or adapt the resources developed within their state.

So, while the guidelines in this report respect and maintain copyright owners’ rights to intellectual property, they also recommend ways in which copyright holders can explicitly authorize how their resource can — and cannot — be used. They advocate that states be explicit with developers of materials who receive public funding about their expectations for licensing of these materials. The solution is straightforward: When public funds are used to support digital resource development, *the agency that supplies the funds should require that the resources can be shared with other potential users when the project is complete*. In addition, to be effective, licensing has to presume sharing rather than preclude it. Having an expectation of sharing, and determining the terms of use in the beginning, will mean that state resources will be invested wisely in projects that will be widely used and will not need to be duplicated in the future.

To respect ownership and promote use of state-funded digital educational resources, the SCORE Working Group on Digital Content Rights examined several different licensing models. The goal was to develop guidelines that can help state-level administrators and policymakers, as funders of digital educational resource development, to establish policies, practices, statutes and regulations, if needed, that increase sharing of — and maximize returns on — their state’s investments in digital educational resources.

Creative Commons: Balancing Ownership and Sharing

The good news is that copyright owners now have licensing options with standardized terms they can use to grant non-exclusive use of their intellectual property. The two most widely used common public licenses available are: the GNU Free Documentation license and Creative Commons.

The GNU Free Documentation license is used for manuals and textbooks. While this license may work for some purposes, it is most appropriate for documents associated with computer software. Creative Commons (CC) is a family of licenses most frequently used for works other than software. (For details, see box at right.) Widely used throughout the world, Creative Commons licenses are most often chosen to promote sharing of educational content. For example, Virginia passed legislation in 2009 that authorized the use of Creative Commons licenses on works created by employees of state agencies.

Creative Commons licenses are free, standardized, public licenses that are created specifically to support the use and dissemination of sharable digital resources. These licenses enable people to easily change their copyright terms from the default of “all rights reserved” to “some rights reserved.” They give individuals, companies and institutions a simple, standardized way to allow copyright holders to tag their works in a clearly definable way that protects their rights while encouraging use of those works under certain conditions specified by the author. The licenses are supported by free, easy-to-use legal tools, including a standard “deed” that describes each license clearly in a human-readable summary.

Creative Commons Licenses Can Increase Use and Sharing

The SCORE Working Group on Digital Content Rights recommends that state educational organizations promote and/or adopt Creative Commons licenses for identifying, describing and authorizing use of digital educational resources. The Working Group further recommends the least restrictive license (*Attribution*) for identifying, describing and authorizing use of digital educational resources in order to maximize potential sharing.

In addition, states and educational agencies should promote administrative services and technical infrastructures, including in-state representatives for handling licensing promotion and fielding questions to promote, support and increase shared use and dissemination of resources. They should create statewide online repositories for digital educational resources, and they should provide experts to support producers and inform potential users of the availability and effective uses of digital educational resources. Finally, when appropriate, funders also should consider requiring all digital educational resources created with public funds to be deposited in an organization-sponsored or endorsed repository.

To further guide policy-makers and administrators, the Working Group recommends that state educational agencies consider the following guidelines as they develop or revise their policies related to the ownership and use of digital educational resources developed with public funds. In those cases where state organizations provide funding for the development of digital resources — and intend to make those resources available and sharable within their state and among other SREB states — the Working Group recommends the following guidelines:

- There should be an explicit presumption and recommendation that all resources using public funds be licensed to provide the highest level of sharing that is possible.

- Sharing should be the default expectation, not the exception. Copyright holders should be aware that altered or custom licenses dramatically reduce — or even preclude — sharing. Exceptions to sharing should be granted only when justifying more restrictive licensing.
- A single, common license with standard terms should be used for all resources whenever possible.
- When appropriate, funders also should consider requiring all digital educational resources created with public funds to be deposited in an organization-sponsored or endorsed repository, but such requirement should not limit the inclusion of the resources in other local, shared or discipline-based repositories. Repositories should use and/or support resources with open (preferably, Creative Commons) licenses.

CREATIVE COMMONS

Creative Commons (CC) is a nonprofit organization that endeavors to increase the amount of cultural, educational and scientific content available to the public for free and legal sharing, use, repurposing and remixing.

CC licenses are built around four terms — Attribution, Non-Commercial, Share Alike and No Derivative Works. All CC licenses require attribution (or credit) to the author of a work. In addition, licenses may have one or more other permissions or restrictions.

- *Attribution.* Allows others to distribute, remix, tweak and build upon the work, even commercially, as long as they credit the author for the original creation. This is the most accommodating of licenses offered.
- *Non-Commercial.* Allows others to copy, distribute, display and perform the work for non-commercial purposes only. If someone wants to use the work for commercial purposes, he or she must contact the author for permission.
- *Share Alike.* Allows others to distribute derivative works but only under the same conditions as the original work.
- *No Derivative Works.* Allows others to copy, distribute, display and use only verbatim copies of a work but not to make derivative works based on it. If someone wants to translate, alter, transform or combine the work with other works, he or she must contact the author for permission.

The licensing terms can be combined or ignored based on individual or institutional preferences in order to generate one of the six CC licenses:

Attribution (the most open of the CC licenses)

Attribution — Share Alike

Attribution — No Derivatives

Attribution — Non-Commercial

Attribution — Non-Commercial —Share Alike

Attribution — Non-Commercial —No Derivatives

(A comprehensive description and common icons used to identify these six licenses can be found at: <http://creativecommons.org/about/licenses/>.)

Guidelines to Increase the Sharing of Digital Educational Resources

I. COMMITMENT TO SHARING

Educational organizations that choose to promote sharing of digital resources can make their resources more user-friendly by requiring that licensing terms under which the resources are used be easy to find and understand, that they consider limiting the variety of licenses used to govern use of resources intended to be shared, and that they encourage licensing terms that give users the rights to adapt and combine resources from multiple sources.

Guideline

States (as well as colleges, universities, districts, and schools) should ensure that the commitment to sharing and disseminating digital educational resources is explicit.

II. GRANT RIGHTS VS. RESERVE RIGHTS

State agencies should consider using the most flexible licenses rather than the most restrictive as a starting point. These licenses should permit resources to be adapted, combined, recombined and shared with few or no restrictions. The license that achieves this purpose most effectively is the Creative Commons *Attribution* license.


More restrictive licenses should be available when there is a clear and compelling reason to use them; however, their use should be discouraged and a process of justification and approval should be required. Using the Creative Commons family of licenses provides a clear, connected and common framework for addressing varying permissions for different types of uses.

Guideline

Digital educational resource developers and funders should recommend the use of license terms that permit unrestricted sharing, and they should recommend more restrictive license terms only under special conditions.

- Licenses should explicitly address whether users are allowed to combine resources with other resources provided by another producer.
- Various media incorporated within a resource should be legally mixable with other resources and the resultant work publishable to the public.
- Digital resources developed or funded by states should avoid the use of third-party, copyrighted material embedded in the material that would otherwise limit its ability to be shared.

III. CLARITY AND IDENTIFICATION OF LICENSE TERMS

License terms for digital educational resources should be easily understood by users. Licenses should have clear terms that are simplified to convey quickly the essential permissions that have been granted. In addition, specific icons can provide visual cues to the terms and conditions associated with the license, making it easy for potential users to verify quickly what they can or cannot do. For example, the icon for the Creative Commons *Attribution* license  clearly and concisely indicates the privileges and restrictions associated with the particular resource to which it is attached.

Guideline

Licenses should provide users with readily available, understandable and standardized terms of use.

- Individual resources should be clearly labeled with the required usage license.
- Licenses should be accompanied by, or linked to, brief descriptions and terms expressing the essential permissions granted by a license in language as clear as possible. The Creative Commons “deed” is a good example of this practice.
- Licenses should be easily identified through the use of prominently displayed icons or other visual cues.
- Accompanying cataloging information, known as “metadata,” should identify the license and describe the terms for use of the resource in an electronic format so that users who identify the resource electronically can determine the circumstances under which they can use the resource.

IV. LICENSE STANDARDIZATION, COMPATIBILITY AND REUSE

State agencies can provide leadership in ensuring that license terms are standard and sufficiently compatible to enable collection, adaptation and recombination of resources from multiple sources. A common framework for understanding what uses and rights are granted with digital resources makes them more usable for educators and learners. When common licenses are altered, the potential sharing is reduced dramatically — if not precluded. Custom licensing requires users to engage in additional interpretation, and custom licenses tend to be more restrictive than necessary. Whenever possible, digital educational resource providers and those who fund creation of resources should discourage or prohibit alterations of common licensing terms without a compelling need to do otherwise.

Guideline

A single, common license with standard terms should be used for all resources whenever possible.

Any statements that conflict with or reserve rights granted by a standardized license should be discouraged and, if allowed, should require justification and be clearly noted.

V. REQUIRING A COMMON LICENSE

The greater the diversity of licensing used to modify rights and specify uses for digital educational resources, the greater the barriers to sharing. Creative Commons licenses are by far the most widely used and endorsed form of explicitly and clearly indicating and assigning rights under which educational content may be used.

Guideline

State educational organizations should promote and/or adopt the use of Creative Commons licensing for digital educational resources that are developed with public funding.

VI. INFRASTRUCTURE AND INCENTIVES

To promote dissemination and shared use of resources, states and educational systems should encourage the development and support of digital content repositories. For these repositories to be used effectively, states and others need to develop the associated infrastructure and services that increase the ability of developers to share (and users to find and use) the digital educational assets that are stored there.

Guideline

State repositories for digital content should use and support resources with accepted metadata standards to improve searches for specific learning content.

Administrative services are also critical to encourage and support the use of digital content among instructors and across institutions. These support systems can increase awareness and use of open licenses and the importance of shared resources. Incentives also should be provided for institutional, departmental and faculty participation in the development and/or use of sharable digital resources.

Guideline

State agencies or systems should identify a resource person or office for constituents concerning licensing and use of digital resources.

Guideline

States should consider giving appropriate incentives for creating and sharing digital resources and for placing materials in a repository. For example, education institutions or systems should consider giving credit in the tenure and promotion process for such activity.

Conclusion

As the cost of instructional resources continues to raise issues for schools, colleges, students and parents, the impact of sharable digital resources on the overall cost of education is significant. The state's investment in developing resources has been significant in most states — but the investment in the policies that ensure those resources can be shared is not impressive. The SCORE Working Group on Digital Content Rights believes these guidelines outline solutions that will help SREB states maximize the return on investment for their substantial digital content inventories.

