

TO: All MUNFA Members  
FROM: The MUNFA Executive Committee  
DATE: May 27, 2008  
SUBJECT: Distance Education and Learning Technologies (DELT)

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We previously issued Information Bulletins regarding the contract introduced September 2006 by DELT (*IB 2006/07:31* – <http://www.mun.ca/munfa/ib060731.htm> and *IB 2007/08:14* -- <http://www.mun.ca/munfa/IB070814.pdf>). With workload assignments being arranged for 2008-2009 we thought it would be helpful to remind Academic Staff Members (ASM's) of salient issues that need to be considered when taking on responsibility for developing course materials for use in courses delivered through DELT.

### **Remuneration**

ASMs taking on responsibility for developing a course for DELT normally have a choice between taking extra payment as a private contractor or doing the work as part of their regular workload. Given that remuneration for development of a DELT course has not increased at least since 2000, we recommend that course development be taken on as part of one's regular workload. If the work for DELT is an overload, then it is to an ASMs advantage to assign a different course as overload for payment and either receive that money in a Research Pool Account or as extra income. The basis for this advice is that the remuneration by DELT is \$5000, including \$3519 for course development plus \$1481 for copyright buyout. In September 2008, the per course stipend for overload is \$4031. One needs to think carefully about whether an additional \$969 is worth the implications of a shared copyright with the University. If an ASM's work for DELT is part of their regular workload, then it is not in their interest to sign a separate agreement with DELT.

### **Issue of Copyright**

The standard DELT contract has a number of problematic clauses. One is that an ASM agrees to give the University a royalty free license for his/her work and agrees to give the University joint ownership of copyright. This may not appear to be a problem except that the University reserves the right to make revisions of course material if an ASM is either unwilling or unable to do so within six months of a request. This is contrary to Clause 27.15 of the Collective Agreement which vests sole copyright with the ASM. However it isn't a violation of the Collective Agreement when an ASM signs a separate contract with DELT for course development. It is essential that an ASM refuse to consent to the contract DELT asks that you to sign if s/he wishes to preserve sole ownership of his/her intellectual property.

By not signing the DELT contract one is then covered by the Collective Agreement. A landmark arbitration award in British Columbia (where an ASM refused to sign the separate contract) found for the Faculty Association and ASM. It held that the scope of the union's exclusive bargaining authority included the right to negotiate matters related to copyright ownership and that the employer, by negotiating directly with members on this matter, violated this right. The arbitrator

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also held that “ownership of the copyright in work produced in the course of employment by an academic author, rather than the university employer is important to support, foster and preserve academic freedom.” The award explicitly states that work done for an employer under separate contract (as in the case of the DELT contract) is not considered to be part of an ASM’s regular employment and thus their right to withhold joint copyright is not protected by the Collective Agreement.

Aside from these issues, keep in mind that course materials developed for DELT (and which it shares joint copyright) may be placed in a digital learning object repository, e.g., the Canadian Learning Object Exchange (CLOE) and its US counterpart (MERLOT) and are freely available to members of these consortia.

### **Academic Freedom and Intellectual Property**

It is important to keep in mind that a course developed under the standard DELT contract is not eligible for revision (with remuneration) within the first five years. After that point, whether revisions are made and whether they are remunerated is at the discretion of DELT. As well, DELT can contract with someone else to make the revisions. An ASM’s name may be removed from the revised product even though the material is technically his/her intellectual property. For many, this fact alone may be a very serious concern.

A course can also at any time be assigned to another instructor without an ASM’s consent. In a few departments agreements have been reached between Department Heads and the faculty which provide that the ASM developing a course will always be given first right of refusal for its instruction. In most, this isn’t the case.

In view of this, an ASM who develops a course for DELT may consider retaining course material (especially that which is clearly unique and is considered intellectual property) that is then given to students as e-handouts (via e-mail) separate from the online course material. This means that others assigned to teach the course cannot use materials designed and owned by an ASM. As well, it may be easier to provide students material that DELT will not duplicate because of copyright issues but which can be distributed under education fair use provisions.

### **Conclusion**

Our advice is that ASMs not sign a contract with DELT. If one does, then be fully aware that the work is being done as a private contractor and the Collective Agreement gives limited protection. If you have questions or need additional information, please consult the earlier IBs and feel free to contact the MUNFA office (ext. 8642 or e-mail: [munfa@mun.ca](mailto:munfa@mun.ca)).