

THE UNIVERSITY OF BRITISH COLUMBIA

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MEMORANDUM

To: Deans, Directors, Department Heads, and Administrators

From: The Office of the University Counsel

Re: **Entering into Service Contracts for the Creation of Creative Content**

Background:

Many of you will hire contractors to create or modify creative content such as websites, course materials, brochures, posters and other promotional or creative materials. The person you hire might be a student or some other person. You will enter into agreements with these people, sometimes informally or orally, for the creation of creative content. These agreements are effectively service contracts for the creation of creative content.

Legal Issues:

When contractors or volunteers are used to create content, legal issues may arise for your Unit and UBC, in two ways:

1. Even though your Unit pays a contractor to create creative content, **your Unit may not actually own the product;** and/or

The lack of ownership in the product creates a problem for Units. Without full ownership rights in creative content, for example a website, Units will not be able to modify or update the creative content. Under Canadian law, the author of the product remains the owner of the copyright in that product unless the author has assigned his copyright to UBC by way of a written agreement. Where the author owns the copyright in the product, they may refuse Units the ability to add to, modify, or update the product. Further, if Units chose to do so without direct consent from the author, the Unit would actually be liable for copyright infringement.

2. Even if the contractor is given strict instructions not to use copyrighted material, **your Unit will be responsible if the contractor breaches copyright of another.**

If Units hire a contractor who uses copyrighted material, such as photos, on such products as brochures, websites and posters, Units are liable for copyright infringement. It is irrelevant whether the copyrighted material was known by the Unit at the time to be copyrighted, or whether the contractor was given specific instructions by the Unit not to use copyrighted materials.

Avoiding Legal Issues:

In order to help Units avoid these problems, we have been working closely with Supply Management to create a general service agreement that will ensure the ownership of copyright in creative content is transferred to UBC upon creation. Additionally, the general contract at Supply Management deals with the infringement issue by requiring the contractor to defend UBC against any infringement claims by third parties.

It is therefore imperative that whenever you are entering into agreements with any contractor for the creation of any creative content, you contact Supply Management. They will be able to provide you with the appropriate form of agreement, as well as direction regarding the proper implementation of such agreement. This will help Units to avoid liability as well as ensure that copyright is owned by UBC and not the author.