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OF COUNSEL – FALL 2010
the newsletter of

NORTHEASTERN UNIVERSITY
OFFICE OF THE UNIVERSITY COUNSEL
378 COLUMBUS PLACE

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Your Contract Questions Answered!

1. Where is the University's Contract Review Policy located?

Answer: The University's Contract Review Policy can be found on the Office of the University Counsel website at www.legal.neu.edu. As part of the contract-related information available through our Office's website, the Office of University Counsel has developed (and is developing) several forms of template agreements to be used by University personnel to document various types of transactions between the University and an outside party. These form agreements include a Professional Services Agreement (both a long and a short form of agreement), a Performer Agreement, a Service Provider Agreement and several others. Some of these forms are available from our website <http://www.northeastern.edu/legal/>. Our website is regularly updated so please be sure to check it for form agreement additions from time to time. Should you have any questions about these form agreements, please contact our Office at x2157.

2. When do I need to use a University form of agreement?

Answer: You should use a University form of agreement whenever possible under the circumstances. A University template agreement offers the standard business terms expected by the University and, if unaltered, is the quickest way to receive all the necessary approvals for your transaction.

3. When should I use the Professional Services Agreement?

Answer: The Professional Services Agreement should be used to document those cases in which the University engages, for example, a consultant, web designer, computer programmer, or another independent contractor to perform any service for the University which is outside the University's usual sphere of business. As a general matter, all independent contractors must make themselves available to the general public for those services as well as to the University. The Accounts Payable Department, working in conjunction with the Office of University Counsel, has posted a policy and related information regarding Independent Contractors on its website. The policy and related information can be found at <http://www.northeastern.edu/ap/independentcontract.html>.

4. A vendor changed some of the language to my agreement after the agreement was signed by the University. Does the University Counsel's office need to review the document again?

Answer: Yes. Vendors and other parties should not change the language to the agreement after it has been signed by the University. If language is changed, the transaction has changed and may no longer be an arrangement acceptable to the University. Please contact the Office of University Counsel in such cases. We recommend that you share the terms of your proposed agreement with the other party in advance to address all issues prior to sending the document to our Office for review and signature by the authorized University official. If your transaction will not be documented on a standard form of

agreement, please contact our office as soon as possible to discuss options for handling your transaction in the most efficient manner.

5. *What is a Non-Disclosure Agreement (NDA) and how are NDA's used?*

Answer: In general, a non-disclosure agreement is one that seeks to protect confidential information or proprietary information that one or both parties may wish to share with the other(s) for certain limited purposes. Employees may be presented with an NDA (or confidentiality agreement) by an outside party in many situations – such as when discussing a potential research project or the potential purchase of a product or services for the University, or for the purpose of exploring future collaborations or business opportunities. An outside party may request that you sign such an agreement individually, and at the time it may seem appropriate to do so, as you may be the one who will be receiving the confidential information. However, because you are acting on behalf of the University in making any such commitment to keep information confidential, the agreement must be reviewed by the University and signed by an authorized University signatory. Such agreements often contain “hidden” clauses regarding intellectual property and other potential long-term and/or binding commitments. Research related non-disclosure agreements should be processed through the Office of Research Administration and Finance and other non-disclosure agreements should be processed through the Office of University Counsel. A template Mutual Non-Disclosure Agreement, where both parties agree to keep information confidential, is available on the Office of University Counsel website.

Avoid Unauthorized of Software!

With the start of the new academic year, your department and staff may find you have a need to use new software. It is critical that only authorized software is used when working on University business, or when using University computer networks. All members of the University should be aware of what constitutes unauthorized use of software. Although there are many kinds of unauthorized use, typically unauthorized use falls into the two categories listed below:

1. Installing software on multiple computers (or making multiple copies) when a single copy has been purchased by the University. Be sure you are aware of the terms of the license agreement between the University (including your department) and the software company before you install software. We recommend keeping a copy of the license agreement with the software media (CD, etc.);
2. Using or installing pirated or “cracked” versions of an application, including applications already licensed by your department or the University.

The University does not condone unauthorized use of software. The University will not accept responsibility for unauthorized use of software, including in the event of a legal claim. Please be aware that you may be held personally liable for unauthorized use of software.

Should you have any questions about authorized/unauthorized use, please contact the Office of University Counsel at x2157.

Increased Access Available to Digital Creative Works for Educational Use

The Digital Millennium Copyright Act (DMCA), makes it illegal (and subject to criminal penalties) to break anti-tampering protections on creative works, such as DVDs. However, access to encrypted, copyrighted works recently has been expanded for University faculty, as well as students in certain disciplines. This access must be consistent with “fair use” principles and be for *educational purposes only*.

Specifically, under the new exemption, university faculty members in all disciplines may break encryption on lawfully made and legally obtained commercial DVDs to copy short portions of motion pictures. These short portions *only* may be used for incorporation into new works for the purpose of criticism and comment. Other restrictions also apply. The exemption also applies to university film and media studies students. University students in other disciplines are not entitled to obtain digital copies of these works in this manner, where other kinds of video capture software are widely available for these students.

Individual faculty members may not have the expertise to break encryption of the creative works for use for educational purposes as discussed above. The University does have departments which provide assistance producing digital courseware and student projects. However, the exemptions described above do not specifically extend to “agents” commissioned by faculty or students to perform such operations. Therefore, before you move forward on such a project idea, please contact the Office of University Counsel for advice.

If you have any questions you would like to see responded to in this space, please submit them to the Office of University Counsel at 378 Columbus Place. Depending upon the nature of your question, we'll either answer you personally or address your issue in a future edition of this newsletter.

Of Counsel has been prepared as a general summary of important developments. It is not intended as individual legal advice. Should you have any questions or need information concerning a specific situation or any of the content of this advisory, please contact the Office of University Counsel, 378 Columbus Place, x2157.