



The Electronic Frontier Foundation applauds the U.S. Department of Education for considering an open licensing policy for grant-funded materials. We strongly recommend that the Department adopt the policy. It would multiply the impact of Department grants by allowing grant-funded educational resources to reach students and educators beyond the scope of each grant.

As the Department notes in its proposal, the current policy allowing the public to access grant-funded works “for Federal Government purposes” doesn’t necessarily help those works reach a larger audience:

[T]he public rarely requested access to these copyrighted materials, possibly due to administrative barriers, lack of clarity regarding the scope of Federal Government purposes, or lack of information about available products.

An open licensing mandate would address each of those limitations in the current policy. The open licenses would allow people to use and share the grant-funded materials with fewer administrative hurdles, and bypass any confusion about what uses are currently permitted. They would also incentivize publishers and other third parties to spread awareness about the materials among educators and package them in ways that they can be used more effectively. Open licenses permit intermediaries to fill the gaps between demand and supply much more effectively than either the Department or individual grantees can alone.

While it’s possible that the policy could adversely affect some grantees, its benefits to the education community at large—including, in many cases, grantees themselves—vastly outweigh the costs. The Department’s proposal points out that relatively few grantees sell or license their grant-funded materials to third parties; therefore, the policy wouldn’t be a burden for most grantees. It could actually aid many of the grantees that do distribute their works commercially: it would provide them with a larger selection of high-quality resources that they can use to supplement their own, free of charge. The number of profitable companies that create and distribute open



educational resources demonstrates that open licensing is compatible with commercial success.

EFF recommends three adjustments to the proposed rules, each of which will reinforce the rules' effectiveness in making grant-funded resources more readily available to the people who need them.

First, we recommend the Department amend § 3474.20(a) to allow grantees to use a license that includes a copyleft or share-alike provision—that is, a provision that requires any adaptations of the licensed work to be shared under the same license. Allowing copyleft licenses would be particularly helpful to grantees that create software: under the proposed rules, grantees would not be able to create modified versions of existing software under copyleft licenses as part of their grant-funded deliverables. The GNU General Public License—the most popular free software license—includes a copyleft provision.

Second, we suggest that the Department consider amending § 3474.20(d). The section retains the Department's nonexclusive right to use grant-funded works, as provided for in CFR § 200.315(b). The Department should commit to using grant-funded works under the rights granted in the licenses, rather than rely on § 200.315(b). All of the rights reserved to the Department would already be granted through an open license as outlined in § 3474.20(a). The only difference is that § 200.315(b) doesn't require attribution and allows the Department to authorize others to distribute the materials. The attribution requirement is not burdensome. No matter what venue the Department (or any third party it authorizes) shares grant-funded content in, it would be preferable for the attribution and licensing information to stay intact so that people who use it are aware of the reuse rights that have been granted to them. That's particularly crucial for educational resources: educators should be empowered to use and share materials unburdened by confusion about their rights.

Finally, we ask that the Department consider amending the open access policy for research funded through the Institute for Education Sciences to require an open license as well. In its proposal, the Department lists several ways in which the educational resources that it funds could be more impactful if grantees shared them under an open license; all of those arguments also apply to research funded through the IES. No open access



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policy can outline every way in which a third party could reuse or build upon a piece of research; an open licensing mandate would protect any number of innovative uses from doubts over copyright restrictions.

Once again, we welcome the proposed policy change. It represents a massive step forward in the Department's mission to foster educational excellence and ensure equal access.

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