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Academic to Academic Material Transfers: Guiding Principles

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Scope

- ◎ *Published materials*
- ◎ ...transferred from one non-profit research institution to another
- ◎ ...for use in research
- ◎ Not for use in humans

Basics

- ◎ For this purpose, “Material” is the originally provided material, plus unmodified subunits and (in the case of biological materials) progeny or expression products (à la UBMTA)

Ownership of Materials should remain with Provider

- ⦿ Including quantities of Materials incorporated into substances made by Recipient
- ⦿ Provider should not seek to own substances created by the Recipient

Recipient should not transfer Materials to third parties

- ◎ Provider may restrict transfers of Material beyond lab of Recipient PI
- ◎ However, Recipient should be able to make new substances available to other non-profit researchers for research purposes and for replication of published results

Provider should make Material available to other nonprofits

- ◎ To replicate and build on published research – esp. Recipient's
- ◎ ...for basic research, under similar terms
- ◎ ...if sufficient quantities are available
- ◎ ...and are not otherwise available or easily replicated

Provider should not restrict Recipient funding sources

- ◎ As long as Material is being used for nonprofit research purposes
- ◎ Including in bona fide academic research sponsored by industry

Provider should not get rights to Recipient inventions

- ◎ Other than research use
 - which is presumably being reserved for all nonprofit research institutions anyway!
- ◎ Provider should place no restrictions on Recipient's intellectual property
 - but restrictions on physical Material are ok
- ◎ Recipient should notify Provider of patent applications involving Material

No commercial rights are transferred to Recipient

- ◎ Recipient may not use Material (or allow others to use) for commercial purposes without a license
 - E.g., transferring Material for a fee or engaging in fee for service activities

Provider should not require a Statement of Work

- ◎ Consistent with freedom of academic research

Publications

- ◎ Provider should not require pre-review or even copies of publications
 - publicly available, after all
- ◎ Providing scientist should not require authorship, other than as scientifically appropriate

No requirement to treat research results as confidential

- ◎ Recipient should not be restricted from disclosing the results of its research
- ◎ No restrictions on disclosing properties of Material (which is already published)

Each party should accept liability for its own actions

- ◎ ...to the extent they are legally able to
do so

Provider may specify disposal

- ◎ Can require that Material be returned or destroyed upon termination
- ◎ Recipient should be able to continue using new substances, even if they contain Material.
 - Relevant terms of agreement will continue to apply

Export Control

- ◎ If Provider knows Material is subject to export control regs, Recipient should be notified
- ◎ Parties should assist each other in compliance
 - But Recipient is responsible for its own compliance

Investigators should not be able to require terms that conflict with these guiding principles

- ◎ Requires senior management “buy in”

DISCUSSION?

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