



Non-Disclosure Agreements in the Classroom: Important considerations before accepting third party proprietary confidential information for classroom use

OVERVIEW

- With more frequency, third parties (such as corporate sponsors, community partners, or other outside entities) wish to offer proprietary information (such as data, materials, financial information, etc.) to an entire class of students.
- However, in exchange for providing **confidential** information to the course instructors, **third parties may ask** that students, course instructors, and/or the University sign:
 - Non-disclosure agreements (**NDA**); and/or
 - Intellectual property (**IP**) agreements (**IP Assignments**) requiring all students to assign their rights to any IP that they created while participating in class activities.
- This memo offers an overview of some of the legal and policy issues related to the use of third party proprietary confidential information in the context of **classroom teaching** if the third party requests an NDA and/or IP Assignment.
- NDAs and IP Assignments are not the same agreements, but IP terms can be included in an NDA.
- If IP terms are requested, please seek legal advice from the [Senior Legal Counsel for Contracts in the Office of the Vice-President & Provost](#).
- The following **does not apply** to students participating in placements, internships, co-curricular or other off-site activities. Please contact the [Office of the Vice-Provost, Students](#) for applicable templates and additional information related to these activities.
- The following **does not apply** to students conducting research under the supervision of a principal investigator. Please contact the [Innovations & Partnerships Office](#) for applicable templates and additional information related to supervised research.

GENERAL CONSIDERATIONS

Is the third party requesting an NDA?

If **yes**, please consider whether collaborating with the third party offers a unique and valuable experiential learning opportunity for the student.

! It can be a valuable learning opportunity for students to apply the knowledge they are learning in the classroom to real-life problems, but onerous NDA terms can present legal and academic risks. Please consider if receiving information under the obligation of confidentiality will offer students:

- ✓ Unique expertise of the third party
- ✓ Access to unique materials
- ✓ Data and equipment that are not available to the general public

If the third party has requested an NDA and the above benefits apply, consider the risk spectrum of accepting information under the obligation of confidentiality.

Factors	Higher Risk	Lower Risk
Size of class	<p style="text-align: center;">Large lecture</p> <p>The more students with access to confidential information, the more opportunities for an inadvertent disclosure.</p>	<p style="text-align: center;">Small seminar</p> <p>Less students means fewer people having access to confidential information, reducing the risk of inadvertent disclosure.</p>
Sophistication of students	<p style="text-align: center;">First year student</p> <p>May not fully comprehend the obligation to maintain confidentiality and may be less likely to comply with the obligations.</p>	<p style="text-align: center;">Upper year student</p> <p>May have already been exposed to NDAs and be more likely to comply with the obligations.</p>
Form of agreement	<p style="text-align: center;">Third party insists on using its own NDA</p> <p>Non-academic NDAs tend to be onerous. For example, the definition of confidential information may include all information exchanged during the course instead of what has been disclosed by the third party.</p>	<p style="text-align: center;">U of T template used without amendment</p> <p>The University's template NDA is balanced and takes into account the academic mission; confidential information is narrowly defined, for example.</p>
Inclusion of IP terms	<p style="text-align: center;">Third Party includes IP terms</p> <p>If all IP arising from the use of confidential information is owned by the third party, this may present challenges for academic progression.</p>	<p>No</p>

Can the course be offered and adhere to the following basic principles?

! **No obligation to assign IP rights in order to participate in the course**
The University does not generally own the work generated by a student in the classroom under the University's Inventions Policy or Copyright Policy. Therefore, students should not be obligated to participate in coursework that requires the assignment of the student's IP to the University, the third party, or to another entity.

! **No impact on grades**
A student's grade and/or evaluation of performance in the course should not be affected by the student's decision to participate or not to participate in coursework requiring the receipt of confidential information and/or the assignment of the student's IP. If they do not wish to participate, an alternative assignment with an equivalent learning experience should be provided.

! **University as signatory**
Agreements should not be signed individually and directly with the third party. If the student is the signatory in her/his personal capacity, there is less legal risk for the University, but the student would be exposed to some personal liability in order to take the course. Instead, the University should sign an agreement with the third party, and then have an agreement in place with each course instructor and student. As course instructors are not typically authorized to execute an NDA, they must obtain proper internal approvals from their academic unit/division head with signing authority for that agreement and underlying activity.



Has the third party requested an IP Assignment?

If **yes**, course instructors and academic unit/division heads should educate the third party about the University's basic principles noted above; namely that the **University does not generally own the work generated by a student in the classroom under the University's Inventions Policy or Copyright Policy,** and therefore cannot commit to assigning student IP to the third party:

! We recommend seeking legal advice from the Senior Legal Counsel for Contracts in the Office of the Vice-President & Provost if receipt of confidential information is conditional upon the third party owning all IP created by the students.



FINAL CHECKLIST

Course Instructors	University Signatories
<ul style="list-style-type: none"><input type="checkbox"/> Please confirm with the third party early on what it expects in return for the disclosure of their information, if anything.<input type="checkbox"/> Please do not commit to assign student IP rights to the third party.<input type="checkbox"/> Please ensure proper internal approvals have been obtained before accepting third party proprietary confidential information for use by you and your students as part of a course your are teaching.<input type="checkbox"/> Please ensure there is an equivalent alternative available to students who do not wish to become subject to confidentiality obligations or to grant rights to their IP, if that is requested by the third party.<input type="checkbox"/> Please do not sign an NDA or an IP Agreement unless you are authorized to do so. An agreement between the University and the third party must be executed and signed by the academic unit/division head with signing authority for that agreement and the underlying activity. Generally, course instructors do not have appropriate signing authority.	<ul style="list-style-type: none"><input type="checkbox"/> If academic unit/division heads have any questions or concerns about an NDA or IP Assignment presented for signature, the <u>Senior Legal Counsel for Contracts in the Office of the Vice-President & Provost</u> can provide legal advice and options for consideration.

In consultation with the Office of the Vice-Provost, Innovations in Undergraduate Education, the Office of the Vice-President & Provost has developed a simple Student NDA template for use when such an agreement is requested by a third party. Additional information and training materials about such teaching and learning innovations will continue to be developed and communicated to units for reference.