University Copyright Policies

What Professors Need to Know
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AAUP *Statement on Copyright*, 1999

• “Institutions of higher learning in particular should interpret and apply the law of copyright so as to encourage the discovery of new knowledge and its dissemination to students, to the profession, and to the public.”

• “Within that tradition, it has been the prevailing academic practice to treat the faculty member as the copyright owner of works that are created independently and at the faculty member’s own initiative for traditional academic purposes.”
Relevant Law: Copyright Act of 1976

• Normally the creator of the work owns the copyright
• Exception: Work Made For Hire (17 U.S.C. §101)
  (1) works “prepared by an employee within the scope of his or her employment,”
  or
  (2) specially ordered or commissioned for certain types of uses where the parties agree in writing that the work shall be considered a Work Made For Hire, but only with respect to certain kinds of works.

Eligible works include:
• an instructional text,
• a test, or
• answer material for a test
Relevant Law: Copyright Act of 1976

Teacher exception to the work made for hire doctrine: University professors retain ownership of course materials and scholarly works.
AAUP’s Statement on Copyright re: Work Made For Hire

“In the case of traditional academic works [...] the faculty member rather than the institution determines the subject matter, the intellectual approach and direction, and the conclusions. This is the very essence of academic freedom.”
Relevant Law: Copyright Act of 1976

- **Transfer of Ownership**
  Under section 204(a), transfers are only valid where an “instrument of conveyance, or note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner’s duly authorized agent” (emphasis added).
University Copyright Policies

Govern copyright ownership and licensing of works created by professors

Copyright ownership

Issuance Date: August 19, 1992

The creation of copyrighted works is one of the ways the University fulfills its mission of contributing to the body of knowledge for the public good. The University encourages the creation of original works of authorship and the free expression and exchange of ideas.

This Policy is intended to embody the spirit of academic tradition, which provides copyright ownership to faculty for their scholarly and aesthetic copyrighted works, and is otherwise consistent with the United States Copyright Law, which provides the University ownership of its employment-related works. Pursuant to Regents' Standing Order 100.4 (gg), the President has responsibility for all matters relating to intellectual property, including copyrights in which the University is involved.

I. Purpose and scope

This statement sets forth the University's Policy on the Copyright Ownership for works produced at, by, or through the University of California, its campuses, and the Department of Energy Laboratories. This Policy applies to University employees,
University Copyright Policies

Current Trends

• Disclaim copyright ownership to *scholarly works, personal works, and artistic creations*
• Most include “*substantial use*” provisions
• Some allow professors to keep the copyright to the *online course materials*
• Most policies grant the university a *broad license* to use professor-owned work
Factors Determining Copyright Ownership

Copyrighted works professors create
Factors Determining Copyright Ownership

• Professor creates copyrighted work.
  • Professor is an employee. **WMFH**
  • Professor creates copyrighted work. Professor is an adjunct. **NOT WMFH.**
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• Professor creates copyrighted work.
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  • Professor creates copyrighted work. Professor is an adjunct. **NOT WMFH.**
• **TEACHER EXCEPTION** applies to scholarly works, course materials even if employee
Factors Determining Copyright Ownership

• Professor creates copyrighted work.
  • Professor is an employee. WMFH
  • Professor creates copyrighted work. Professor is an adjunct. NOT WMFH.
• TEACHER EXCEPTION applies to scholarly works, course materials even if employee
• Professor uses $100 million cell splicer for research. “SUBSTANTIAL USE”? 

“Substantial use”: University owns
WMFH: University owns
Teacher Exception: Professor owns
Not WMFH (Adjunct): Professor owns
Ownership versus Use

**Issues:**
- What can university do with the work?
- What if professor leaves?
- Duration of university’s license to use the work?
- University influence over scholarship & teaching
- “Substantial use” approvals
- Transfer from university to professor
Issue: Substantial Use of University Resources

- “extra college support” (Curry College)
- “resources beyond those usually customarily provided” (Maryland)
- “in excess of the usual support generally available to similarly situated faculty members” (University of California)
Issue: Substantial Use of University Resources

Hypothetical 1A:
- Humanities department professor
- Using research assistants and a chemistry lab
Issue: Substantial Use of University Resources

- Hypothetical 1B:
  - Professor in chemistry dept.
  - Writing article using gene sequencer ($100 million)
Issue: Substantial Use of University Resources

Best Practice: Define policy terms in favor of professor ownership

• Define terms **narrowly**
• Policies should **clearly and explicitly** state procedures for using substantial resources
• A **separate written agreement**
Issue: Disclaiming versus Transferring

- Some university copyright policies “disclaim” ownership of traditional works.
- Other policies transfer to the university, or vice versa.
Issue: MOOCs and Distance Education

- AAUP’s *Statement on Online and Distance Education*:
  - “As with all other curricular matters, the faculty should have primary responsibility for determining the policies and practices of the institution in regard to distance education.”
Issue: MOOCs and Distance Education

Hypothetical #2:

- University professor creates an online course
- Professor leaves university for another institution
- Who gets the course?
Issue: MOOCs and Distance Education

Best Practices:

• Ownership should be **expressly addressed** in policy.
• If university owns copyright, professors should be granted **perpetual license** to teach the course, and **attribution rights**.
• University should **notify** professors when it makes changes to the course.
Overall Best Practices

Define policy terms in favor of academic freedom and professor autonomy

• Define “substantial use” provisions narrowly.
• Properly effectuate transfers of copyright ownership instead of “disclaiming” ownership.
• Copyright ownership of MOOC/online education/distance education materials should be expressly addressed in the copyright policy and the professor should retain the copyright to such materials.
AAUP Policy Statements

- *Statement on Online and Distance Education*. 1999.
AAUP Legal Analysis

Legal Round-Up: What’s new and Noteworthy for Higher Education?

AAUP Amicus Briefs.

Copyrights and Wrongs.

Intellectual Property, Faculty, and Unions.

Faculty Rights and Responsibilities in Distance Learning.

Distance Learning and Intellectual Property: Ownership and Related Faculty Rights and Responsibilities.
Other AAUP Resources

• **AAUP Toolkit: Intellectual Property at Risk.** Includes fact sheets, sample legislation, amicus briefs, and other resources as part of our campaign to protect intellectual property rights.

• **Sample Distance Education Policy & Contract Language.**

• **Sample Intellectual Property Policy and Contract Language.**

• **AAUP-CBC Contract Database.** The AAUP-CBC maintains a database of faculty collective bargaining agreements, some of which address copyright or distance education.

• All are on the web at [http://www.aaup.org/issues/copyright-IP](http://www.aaup.org/issues/copyright-IP)
Questions?

www.aaup.org