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# University copyright policies for online courses: An evaluative resource tool for unbundling rights of use, control, and revenue

Tamara A. Patzer

*University of South Florida*

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UNIVERSITY COPYRIGHT POLICIES FOR ONLINE COURSES:  
AN EVALUATIVE RESOURCE TOOL FOR  
UNBUNDLING RIGHTS OF USE, CONTROL, AND REVENUE

By

Tamara A. Patzer

A thesis submitted in partial fulfillment  
of the requirements for the degree of  
Master of Arts degree  
School of Mass Communications  
College of Arts and Sciences  
University of South Florida

Major Professor: Barbara K. Petersen, Ph.D.  
Kenneth C. Killebrew, Ph.D.  
Ann E. Barron, Ph.D.

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Contracts, Faculty Ownership, Guidelines

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All people dream: but not equally.  
those who dream by night  
in the dusty recesses of their minds  
wake in the day to find that it was vanity.  
But the dreamers of the day  
are dangerous people,  
for they may act their dream with open eyes  
to make it possible.

– T.E. Lawrence

### Dedication

This thesis is dedicated to my mother Margaret Ann Wicklund Wiese and my father Curtis Allen Wiese, Sr. For together, they taught me the value of education and through example, they taught me how to achieve my goals through vision, dedication and hard work.

This thesis is also dedicated to my children Kristina Marie Patzer Blasen, Richard Nathan Freshwater and Kent Christian Freshwater. It is because of them I lifted myself up and reached out for more, so they would know dreams are meant to be lived during daylight hours.

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My University of South Florida graduate experience continues each day as I work as a newspaper editor for a Southwest Florida newspaper. Each day a realization springs forth and I "get" a lesson presented in one of my courses. With this in mind, I would also like to acknowledge every classmate and professor I have encountered during my tenure at USF. Each person afforded me insight and perspectives beyond the topic of mass communications. For this, I am forever grateful.

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## University Copyright Policies for Online Courses:

An Evaluative Resource Tool for Unbundling Rights of Use, Control, and Revenue

By Tamara A. Patzer

### ABSTRACT

Who cares about who owns online courses? Nobody, because that is not what the issue is really about. Ownership is an emotional issue, but controlling the rights of a copyrightable work is tangible and logical. The important question to answer is not who owns online courses, but who controls the rights of any copyrightable work. For universities and faculty members, getting over the emotional issues and down to the foundation of what is truly at stake is of major concern. While it is nearly impossible to create qualitative guidelines for copyright policies and/or contracts, it is eminently possible to examine existing policies and contracts and relate how a handful of universities are handling copyright and intellectual property issues pertaining to online courses.

The purpose of this thesis is to provide a starting point for this complex transaction in the form of a resource tool that includes some basic background about copyright law, relevant case law related to “work-for-hire,” and relevant academic freedom issues.

The original work of this thesis is the creation of a tool, which reviews of a sampling of university policies pertaining to online copyright issues and ownership.

Accordingly, the contribution this thesis makes to the understanding and clarification of universities policies related to online material copyright ownership will be important for faculty members and universities in two ways.

First, it will help others develop better online copyright policies based on tangible issues rather than emotional ones. Second, this thesis can be a basis for others to build upon for future research on this important topic.

## **Chapter 1**

### **Introduction**

#### **Who Owns the Copyright?**

With the popularity of the World Wide Web, Internet, and e-mail, the idea of faculty owning course materials has been challenged in recent years by the advent of virtual classrooms and courses made specifically for online or distance learning. With money to be made, universities are striking deals with nonacademic corporations to proffer academic wares to students around the globe, often selling the course content or giving ownership copyrights to course content created by faculty to these outside corporations (Twigg, 2000).

Among the universities that “sold” course materials to outside sources are the University of California at Los Angeles (UCLA), University of Berkeley (UC Berkeley) and the University of Colorado (Noble, 1997). Respectively, UCLA sold some courses for distance learning purposes to its own for-profit subsidiary called The Home Education Network (THEN). UC Berkeley had an online course distribution agreement with America On Line (AOL). The University of Colorado sold some of its courses to an outside vendor called Real Education. Many other universities struck similar deals with other companies (Noble, 1998).

One question to ask is why? Is it for the sake of education for all? Or perhaps, it is the lure of the almighty dollar. There are theories on both sides, but Twigg argued that most of the discussion is about “tapping into a gold mine” (Twigg, 2000).

Agreements between universities and outside corporations seem to be heralding a new frontier in education.

They bring up some interesting questions related to education and commerce, thus bringing copyright law into the practice of higher education. In the end, will the content of online educational courses be dictated by the media or by university administrators? Or, will online educational course content remain in the hands of scholars and educators? Will distance learning courses really offer an authentic education, or will the courses just be short cuts to getting a piece of paper with the word *diploma* (Noble, 1998)?

If a university sells course material created by a faculty member, does the faculty member have any legal claims? This question is directly related to the ownership issues that a clearly written copyright ownership policy or written copyright contract would address.

Taking the hard line against the practice of universities selling online course content to outside education vendors, Noble (1998) contended that faculty should file for injunctions against universities to prevent them from entering commercial agreements or from executing the agreements (if in fact, the universities are selling content they do not own). Is the copyright issue really about money? Are universities or independent distance educators making millions, as described in the gold mine scenario offered by Twigg (2000)? It's highly doubtful. Is the issue of "who owns online courses" the real issue? No, it isn't.

## **Who Cares About Ownership? It's Really About the "Rights" Issue**

Who cares about who owns online courses? Nobody, because that is not what the issue is really about. Ownership is an emotional issue, but controlling the rights of a copyrightable work is tangible and logical. The important question to answer is not who owns online courses, but who controls the rights of any copyrightable work. For universities and faculty members, getting over the emotional issues and down to the foundation of what is truly at stake is of major concern. While it is nearly impossible to create qualitative guidelines for copyright policies and/or contracts, it is eminently possible to examine existing policies and contracts and relate how a handful of universities are handling copyright and intellectual property issues pertaining to online courses. Interestingly, some universities choose not to address the copyright issues of online courseware. Still others gloss over online course ownership issues and target copyright fair use issues instead. Other universities claim ownership of online courses, while others only claim ownership if the author made use of "substantial" university resources. Another group proclaim that the author/creators retain the rights of copyright, some with restrictions, some not.

Since there is no "one size fits all" answer to creating a copyright policy to satisfy all needs for all people, one goal of this thesis is to help faculty and university administrators understand the issues involved in creating a copyright policy that focuses on online courses (also known as Web courses) courseware, or new media.

While this thesis cannot presume to offer guidelines for creating the perfect copyright policy for online courses, it can offer insight and resources for others to draw upon in their endeavors to create policies that work for their unique situations.

One thing is certain. Since rights are tangible, every policy should focus on rights or unbundling of copyrights, not just the emotional issue of ownership. As evidenced by the literature, with no clear overriding legal guidelines available through the court system, and nothing more than tradition guiding some universities and faculty members as to the ownership and rights of use of faculty-produced online materials, now is the time to put it in writing. A clear, legally binding contract that protects both parties — i.e., the university and the faculty member(s) — is one way to achieve this end. At the very minimum, all universities and colleges should have policies as to the handling of copyright related issues pertaining to online courses and all forms of copyrightable materials produced by faculty and students. Such policies need to be in place due to the ever-increasing use of Internet and digital sources for the creation and dissemination of information in education.

As a proponent for the unbundling of copyrights and written contracts and policies, I am aware that contracts may not be the answer for all occasions; however, a well-written document legally binding upon all parties can only help create a mutual understanding between those parties involved, and may, in fact, help keep open the lines of communication regarding academic creativity.

The purpose of this thesis is to provide a starting point for this complex transaction in the form of a resource tool that includes some basic background about copyright law, relevant case law related to “work-for-hire,” and relevant academic freedom issues.

Additionally, the thesis reviewed a small sampling of existing university copyright policies that universities and colleges could use to create and/or revise their own policies regarding copyright ownership of online courses (See Tables A-1 through A-6).

The introduction to this thesis has presented some examples of universities engaged in selling course materials to for-profit organizations. The Literature Review includes two detailed studies of trends in academe related to copyright ownership issues at universities nationwide (See Appendix A, Table A-1 and Appendix B), followed by a brief look at copyright basics related to ownership as presented in Title 17 of the United States Code (the Copyright Act of 1976). Also included is a review of the common legal cases cited in the literature related to “work-for-hire” and how academics or faculty have been treated as a rule in the court system and at universities, along with the related issue of the definition of academic freedom.

A substantial portion of the Literature Review presents an update of copyright and intellectual property guidelines offered by academics, lawyers, and consortiums deemed acceptable to both university administrators and faculty members at selected institutions across the United States.

The original work of this thesis is a review of a sampling of university policies pertaining to online copyright issues and ownership. Accordingly, the contribution this thesis makes to the understanding and clarification of universities policies related to online material copyright ownership will be important for faculty members and universities in two ways.

First, it will help others develop better online copyright policies based on tangible issues rather than emotional ones. Second, this thesis can be a basis for others to build upon for future research on this important topic.

## Chapter 2

### Literature Review

#### **1992-2001: Trends in Academe regarding faculty rights to copyright ownership**

Packard (2001) conducted a content analysis of 69 <sup>1</sup>universities to provide evidence of trends in academe regarding the rights of university professors to their intellectual and creative work. Packard's study replicated the 1990-91 studies by Lape (1992). (See Table A-1.)

In Lape's 1992 study, institutions identified as Research Universities I by the Carnegie Foundation for the Advancement of Teaching were contacted to determine whether they had copyright policies and if so, what was included in them. To maintain the integrity of the study, even though in the past decade the list of Carnegie Research I<sup>2</sup> universities had grown from 70 to 152, Packard (2001) used the original 70 universities except for Yeshiva University, which refused to participate.

Packard (2001) noted that overall, universities are moving toward a more comprehensive view regarding faculty copyrights.

Following are some highlights from Packard's (2001) findings compared with Lape's (1992) study.

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<sup>1</sup> See Appendix B for listings of universities studied by Packard, 2001.

<sup>2</sup> Packard noted: The Carnegie Foundation has changed its classification system. At the time of Packard's study it classified what were Research I institutions as Doctoral/Research Universities--Extensive. See <http://www.carnegiefoundation.org/classification/>

In 1990-91, out of 70 institutions, 11 had not adopted a written copyright policy regarding ownership of faculty work and five had policies in draft form only (Lape, 1992). Nearly a decade later, Packard (2001) found that all but one had adopted a copyright policy and three were working on drafts. The studies showed the trend toward creating policies related to faculty ownership, implying that universities were recognizing the potential value of works produced by professors.

In both Lape's (1992) and Packard's (2001) studies, 100 percent of all policies reviewed showed that universities claimed ownership of at least some faculty works. The reason given most often for claiming some faculty works was "substantial use of university resources; however, some universities claim works created with any university resources not available for free to the general public" (Packard, p. 297). While Lape did not distinguish between the two reasons for claiming some faculty works, in 1990-91, 42 universities used some variation of the foregoing language. Fifty-seven (15 more) did in early 2000. Both Lape and Packard found that institutions cited used university resources as an equitable basis for their claims to faculty work. Lape found that 16 universities narrowed the scope of works claimed by excluding commonly used resources such as "libraries, offices, salaries, classrooms, laboratories, and secretaries." Packard found 20 institutions did in early 2000. Lape found two institutional policies that attempted to define "substantial resources" in dollar amounts. Packard found only one did in early 2000.

This trend toward universities claiming some ownership of faculty materials should be a red flag for faculty members who create potentially valuable materials such as online courses or other types of income producing materials. This trend points to a new need for a binding written contract defining the copyrights of all parties involved.

Lape (1992) found that most university policies attempted to protect faculty rights related to traditional literary works, such as books, articles, plays, and poetry.

Lape found 16 policies that expressly disclaimed university copyright ownership of traditional scholarly works, but with some disclaimers. Nearly a decade later, Packard found 49 universities disclaimed university copyright ownership of traditional scholarly work, with some disclaimers.

Although no specific number was noted in Lape's (1992) study, Packard (2001) found 12 institutions that included policies that included provisions that cede control of educational materials, including syllabi, lecture notes, tests and, in some cases, Internet and Web postings, to the professors who created them. While this was good news for faculty, it was clear that many universities policies did not address the issue at all.

Academic freedom or similar language had been incorporated into 29 policies in 2000, up from 18 policies in 1990-91, in which Lape (1992) found statements of commitment to academic freedom or the free dissemination of ideas. Packard (2001) noted very few universities used academic freedom as an excuse or reason to copyright faculty work (p. 297). Interestingly, academic freedom language does not necessarily protect the actual copyrights of a faculty member.

With no written contracts, any dispute could end up in a court of law, and depending upon the judge's interpretation of the case and existing copyright laws, the work could be viewed as a "work-for-hire" under the Copyright Act of 1976. Again, with academic work copyright being such a gray area, it is in the best interest of a university and its faculty members to create written contracts related to how works created by faculty will be treated.

Both Lape (1992) and Packard (2001) found data showing universities are consistently interested in software, but do not necessarily incorporate more provisions asserting ownership over it. Lape found that 19 policies distinguished computer programs from other copyrightable works.

Lape's (1992) study did not include policies where computer programs were in a "laundry list" of other works claimed, so Packard (2001) could not know how many universities considered software as one of many potential targets of university ownership 10 years previous. Packard found 34 universities had incorporated software into their policies as possible work falling within university purview. Lape found five policies that addressed software as a separate issue and the number was the same in 2000; however, Packard noted, they may not be the same five universities. Lape found four universities treating computer programs in their patent policies, even if computer programs are protected by copyright instead of patent law; two did in 2000.

With the exception of policies claiming works by genre, Lape (1992) found 25 policies claimed work under the concept. These 25 policies claimed work "produced as a result of specific, direct, or written job assignment or duties" (Packard, p. 298).

This number had increased to 37 in 2000. Lape (1992) found nine policies that claimed works produced by persons hired to produce such works. Packard (2001) found 12. Lape found 10 policies claiming “commissioned works.” Packard found 23. Lape found six policies claimed “work-for-hire” as defined by the Copyright Act. Packard found 18 policies made that statement and one claimed work developed within the scope of employment. Packard also found discrepancies between different universities related to the conception of “work-for-hire.”

Some universities considered “works-for-hire” to be extra work assigned to a faculty member in addition to a professor’s normal workload. Other universities required agreements be signed before work begins, so faculty have advanced notice that the university intends to claim the eventual product (Packard, p. 302).

Lape (1992) found 18 university policies that provided for joint ownership or a royalty-free license for the university to use the faculty work. Packard (2001) found five, noting the decline may reflect the complexities of joint ownership. In Lape’s study, 10 policies claimed non-exclusive, royalty-free licenses for the university’s use of faculty work. Packard found 16. Packard found, however, that the most common practice was that universities claimed ownership of some faculty works and offered to share a percentage of royalties with the professor. Lape found 46; nearly a decade later, 50 universities offered this arrangement. This arrangement was not true, however, when an agreement was in place (Packard, p. 303).

Packard (2001) found that some universities allowed faculty to maintain some creative control over works claimed by the university.

Some policies included provisions allowing professors to control dissemination and revision of their works and the length of time the faculty member was identified as the work's creator. Lape (1992) found five policies allowing professors to control the use of work within the university; seven did in 2000. Seven policies allowed professors to revise their works, 10 did in 2000. In 1990-91, one policy granted authors the right to make new works based on the claimed work. In 2000, six policies granted authors the right to continue using their work for academic purposes; two specifically referred to the right to make derivative works.

Lape (1992) found no policies gave professors unilateral control over any aspect of work licensed outside of the university, such as how the work was marketed or published. The case remained so in 2000. While Lape found six policies containing language for transfer of copyright ownership back to the professor if commercialization or publication did not take place within a set period of time, 16 policies contained this stipulation in early 2000. Packard (2001) said few of the policies were mandatory, and many contained clauses that allowed universities to retain licensing rights or rights to derivative works.

Lape (1992) predicted that as disputes increased regarding copyrights to faculty work, policies would become more extensive and include a policy for interpretation and adjudication of these disputes. Lape noted that many policies provided for a committee within the university to perform initial decision-making regarding faculty ownership, and that binding decisions would be made by university officials or through arbitration.

While Lape (1992) did not mention a number of policies in the original study, Packard (2001) found that 33 did so in 2000.

Out of the 33, three allowed for binding arbitration, and the remainder relied on a member of the administration to settle disputes. Packard noted that the policies did not seem to recognize the appearance of unfairness if final decisions are made by university officials alone.

Agreements in writing, signed by both the faculty member and a university official, that are incorporated into the university's copyright policy may affect the validity of the policy and also affect the effectiveness of the policy. Lape (1992) found six policies pertaining to the "in writing" agreement.

Packard (2001) found eight mentioning a copyright agreement that employees must sign as a condition of employment. No policy mentioned the agreement being signed by a university representative.

Lape (1992) noted that policies made some provision for construction and enforcement of the policies' terms, but did not say how many. In Packard's (2001) study, eight policies included provisions for enforcement, including suggestions for measures that could be taken against employees who failed to volunteer information about their works, or who attempted to license the works themselves.

Lape (1992) found many policies used vague language, contained undefined terms, and had internal inconsistencies. Packard (2001) found the same.

### **Academic Exception Created By Academic Freedom**

Packard (2001) found that while academic freedom in the court system was losing ground, in university copyright policies references to academic freedom were on the rise.

Compared to 26 percent of policies mentioning academic freedom in Lape's 1992 study, 42 percent mentioned it in Packard's study. The largest increase — up from 23 percent to 71 percent — was the number of universities acknowledging in 2000 that traditional academic works should be protected so the universities do not claim it.

For the purposes of this thesis, the definition of academic freedom is the one accepted by the American Association of University Professors (AAUP) and Association of American Colleges and Universities (AACU) in its 1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments. (See Appendix C for complete statement.)

College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public might judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.

## **Copyright Applications and Academic Practice**

The AAUP has also developed a statement on copyright application related to academic practice. (See Appendix D, for complete statement.)

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. Examples include class notes and syllabi, books and articles, works of fiction and nonfiction, poems and dramatic works, musical and choreographic works, pictorial, graphic, and sculptural works, and educational software, commonly known as “courseware.” This practice has been followed for the most part, regardless of the physical medium in which these “traditional academic works” appear, that is, whether on paper or in audiovisual or electronic form. As will be developed below, this practice should therefore ordinarily apply to the development of courseware for use in programs of distance education.

Traditionally, university faculty have been regarded as the owners of the copyrightable work they create, and increasingly as general policy, most universities have disclaimed copyright interests in these works.

For example, Packard (2000) found nearly 71 percent of 70 Carnegie Foundation Research I Universities disclaimed traditional scholarly work compared to Lape’s (1992) study, which found 23 percent disclaimed traditional scholarly works. (See Table A-1) This was before digital technology arrived on the scene making faculty works a lucrative source for financial gain by universities at the very least.

## **“Work-For-Hire” Doctrine Case Law**

While there are few U.S. Supreme Court decisions clarifying whether certain types of new works produced by faculty members belong to the creator or to the university for which he or she works, there are some lower court decisions that provide insight into the “work-for-hire” doctrine as it is related to faculty creators. More than anything, these court decisions highlight the great need for well-written, clear copyright ownership policies and legally binding contracts in the world of academia.

Prior to the enactment of the Copyright Act of 1976, the common law supported the position that faculty writings and course-related materials were not “work-for-hire” as defined in the 1909 Copyright Act and from which academic researchers were exempted. There is some support for the notion that a teacher exception to the “work-for-hire” doctrine protects faculty rights to their academic works. (Simon, 1983, Borow, 1998, Laughlin, 2000.)

The “work-for-hire” doctrine was first codified in the Copyright Act of 1909.

Under the 1909 law, “courts and commentators regarded the doctrine as largely inapplicable to teachers” [Act of March 4, 1909, ch. 320, Pub. L. No. 60-320, 35 Stat. 1075 (1909).]

For example, ownership and express agreement were the relevant issues in *Williams v. Weisser*, 78 Cal Rptr. 542 (Cal. App. 1969), where the California Appellate Court decided that the professor owned the common law copyright to his or her lectures. In this example, the pre-1976 common law was applied and it was determined that the professor and not the university was the owner of his lecture materials, regardless whether he or she developed them during “leisure time” or university time.

The court emphasized the undesirable consequences of constraining a professor's ability to build on his or her original works to move freely to other educational institutions. While this case only affected this particular district in California, and relied on former law, it revealed the policy concerns related to ownership issues.

In an early case decision in the Washington D.C. courts, *Sherrill v. Grieves*, 57 Wash. L. Rep. 286 (S. Ct. D.C. 1929), the court deemed that the instructor at a U.S. Army school owned the copyright to a written version of his lectures. Again, while this is not the law of the land, it does reflect that copyright laws dating back to 1909 typically show that when it comes to lectures, professors (faculty) typically prevail as owners of their works.

While courts have not addressed the issue directly, since the enactment of Title 17 of the United States Code (Copyright Act of 1976) there have been related issues addressed and the courts have varied in their treatment of copyright.

For example, in *Weinstein v. University of Illinois* (811 F. 2d 11091, 1987) the Seventh Circuit Court of Appeals stated that the 1976 Act "is general enough to make every academic article a 'work-for-hire' and therefore vest exclusive control in universities rather than scholars" (Borow, 1998, p. 5). In a contradictory case, *Hays v. Sony Corp. of America*, (847 F.2d 412, 7th Cir. 1988), the Seventh Circuit Court of Appeals ruled that faculty own copyrights in works they create even though the works are created during "school time [and] for school purposes" (p. 416) and would ordinarily be considered a "work-for-hire."

The *Hays* court cited the academic researcher exception to the “work-for-hire” doctrine under the 1909 Copyright Act, finding an “absence of any indication that Congress meant to abolish” the academic researcher exception in passing the Copyright Act of 1976 (Borow, 1998, p. 5).

Despite the fact that faculty publish as part of their employment responsibilities and use university resources and supplies, the “universal assumption” prior to the Copyright Act of 1976 was that faculty were entitled to own the copyright for what they produce. At the center of the interpretation controversy is how to apply the legal principles of “work-for-hire” within the realm of academia.

In a landmark case related to this issue, *Community for Creative Non-Violence (CCNV) v. Reid* (490 U.S. 730, 1989), the United States Supreme Court clearly determined that the interpretation of the statutory definition of “work-for-hire” must be guided by the common law of agency.

Under agency law, the primary question that determines whether a work was prepared in the course of employment is whether the employer had the right to control the manner and means by which the work was produced. [See. e.g., *NLRB v. Maine Caterers, Inc.*, 654 F.2d 131, 133 (CAI 1981). Cert. Denied, 455 U.S. 940 (1982)] In this case, CCNV, a non-profit association, commissioned Reid to create a sculpture.

Once the sculpture was complete, both Reid and CCNV claimed to own the copyright to the sculpture. CCNV claimed copyright under the “work-for-hire” doctrine. In contrast, Reid claimed that since he created the work, he was the rightful owner of the copyright.

The Supreme Court held that Reid was the owner of the work under the Copyright Act, and that he was not a regular employee of CCNV but, instead was an independent contractor.

The case is relevant to the scope of employment issue because it has “implications for determining whether the educator is an employee” within the scope of employment (Borow, 1998, p. 5). Borow explained that the CCNV decision offered 13 factors for determining when a hired party is an employee versus an independent contractor. When these factors are applied to the academic context, the result is difficult to determine. Borow noted, “Scholarly works produced by academics may or may not be considered “work-for-hire” because while four of the 13 factors weigh in favor of the faculty member and four of the factors weigh in favor of the university, the remaining five factors have equities for both sides” (p. 5). The court in CCNV strongly suggested that “Congress intended ‘scope of employment’ to be defined under the general common law of agency” (p. 5).

An excerpt from Title 17 helps us understand why the ownership issue of “work-for-hire” is so confusing. It would seem that faculty works would fall into the category of “work-for-hire,” if you read the following without knowledge of prior common law that has interpreted the statute.

According to Title 17, in some cases a “work-for-hire” is a work prepared by an employee within the scope of his or her employment; in others it is a work specially ordered or commissioned for use in a collective work.

“...as a part of a motion picture or other audiovisual work, as a sound recording, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a “work-for-hire.” For the purpose of the foregoing sentence, a “supplementary work” is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwards, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an "instructional text" is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities” (Title 17, Chapter 1, Section 101).

While the foregoing excerpt is fairly clear regarding “work-for-hire” as it relates to “instructional text” in a compilation, it does not address the whole project(s) or works created by faculty for courses, online or not.

If copyright law since 1976, as it relates to academia, were simple to interpret, the ownership of online course materials would be clear, but it is not. It is at this point that copyright law gets muddy and requires a careful look at how Title 17 reads juxtaposed against how copyright has been interpreted in actual use.

Since the Copyright Act of 1976, it would appear that a faculty member's work would fall into the category of "work-for-hire," if the basic principles of agency law were applied. For example, if the creator of the course materials meets the criteria as a regular employee, the work might be considered "work-for-hire."

The factors that could deem someone an employee include income tax withholding by the employer; withholding for benefits or benefits paid for by the employer; a work schedule set by the employer; the employer providing work space, materials and equipment to prepare the work; a long-term relationship between the employer and the worker and the right of the employer to assign and review the projects of the worker.

Again, at first glance it appears that a faculty member is an employee, and therefore, subject to the "work-for-hire," clause in the copyright law. However, in addition to this, faculty have "academic freedom," which helps to create a different, or perhaps, special type of relationship between faculty and the university. In most cases, the university does not have the right to supervise scholarly production; therefore, in most cases, many or most of copyrightable faculty works are not "work-for-hire." So, in essence, faculty works do not meet the law of agency test; therefore, faculty works are not "work-for-hire."

Of course, each case should be evaluated on its individual merits, but again, traditionally, most faculty works have been deemed the property of the author(s) and not that of the university or the institution.<sup>3</sup>

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<sup>3</sup> It is important to note that patents and trademarks have been treated differently by universities than copyrightable materials, but these issues will not be discussed here because they are beyond the scope of the present research study.

It is obvious that the ambiguity of “work-for-hire” as it relates to copyright and academic freedom creates the need for clear, written policies related to this issue to protect both the rights and interests of faculty and universities.

### **Asking the Right Questions: Some Perspectives**

As with any attempt to find a satisfactory solution to any problem, first, there must be questions. Of course, if one asked the wrong questions, there would never be a workable solution to any problem. With this in mind, committees at various universities and organizations (such as the Consortium for Educational Technology for University Systems (CETUS)<sup>4</sup> and Pew Symposium) have met to work out policies related to intellectual property and copyright issues. And, of course, there are conflicting points of view on the subject. (Carnevale, 1999; The Node Learning Technologies Network, 1999; Thompson, 1999; Twigg, 2000).

For example, at one such meeting in 1999, Dennis F. Thompson, associate provost and professor of government at Harvard University, said the question(s) to ask related to information technology products created by faculty are not related to the attributes of the product itself, but to the need for faculty to shift and look at the circumstances of creating these products. Thompson said after the shift is made, the policy should be based on general principles that appeal to the core interests of the university and be applied to products produced by faculty, staff, and students.

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<sup>4</sup> The Consortium for Educational Technology for University Systems (CETUS) is made up of California State University, State University of New York and City University of New York.

Of course, since Thompson (1999) was a provost, he was looking at the university interests as taking precedence over faculty interests; however, it is important that faculty understand all sides of the issue. This is imperative because protecting an individual's rights as creator should not violate or hinder the rights and interests of all faculty members. In other words, there is a need to look at intellectual property policies from several points of view.

Thompson (1999) outlined many questions that should be considered when creating intellectual property policies. He broke the issues into basic themes based on financial, intellectual, and reputation concerns. The following questions just touch the tip of all possibilities, but show the scope and depth of the intellectual property copyright issue. For example, Thompson posed the following questions:

- Why should the university not treat products created by faculty members in the same way it treats products created by staff members, i.e. as “work-for-hire?”
- Can a value be placed on the atmosphere a university provides for faculty to create work?
- If the university claims ownership, then should the compensation structure be changed to accommodate this change?
- What is the effect of using the university's name?
- What if the university's name is damaged by a faculty member (Thompson, 1999 para. 11-48)?<sup>5</sup>

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<sup>5</sup> Retrieved August 26, 2003 from <http://www.educause.edu/ir/library/html/erm99022.html>

While Thompson's (1999) perspective came from a university administrator's point of view, Alger (2002) pointed out some copyrights of concern to faculty related to online educational materials. Alger (2002) outlined that faculty care about:

- the ability to edit and control the presentation of their work, and to exercise a right of first refusal in the preparation of subsequent versions.
- the ability to change and update materials over time, reflecting new research, evidence, or developments.
- the ability to create derivative or related works (for example, faculty members may want to retain the right to publish articles on subjects covered in online educational materials and courses).
- professional recognition and credit both in and outside the institution, including consideration of online works in promotion and tenure policies.
- the right to take educational materials they create when they leave for another institution, for their own teaching and research purposes.
- the right to have a say in whether and how their works are commercialized, and to share in the profits (if any) from such commercialization.
- the right to share their work with peers in their disciplines (e.g., to check their work or to build upon it).

(Alger, 2002, pp. 2-3)

These are just a few questions of concern, but they highlight myriad issues surrounding the intellectual property rights policy issue at universities.

One thing is certain — ownership of copyright includes both responsibility and possibility for all concerned.

### **Foundations for Creating Policies**

The creation of policies and/or guidelines related to copyright should be of the utmost importance to both faculty and universities. Indeed, this has been the topic of debate at many symposiums and meetings across the nation (Carnevale, 1999; The Node Learning Technologies Network, 1999; Twigg, C., 2000). Basic themes bubble forth repeatedly both in the work of scholars and in actual policies in use in U.S. universities.

With the basic themes of ownership rights, use, revenue, and control at the forefront, intellectual property and copyright policies at the university level should at the very least have a basic foundation based on existing copyright law and relevant common law and academic exception, taking into consideration the rights and interests of all parties concerned. It would seem that since one of the primary issues involved in copyright law is the right to distribute copyrightable materials for financial gain, a flexible, living policy would be the overall best solution.

In the next few pages are some highlights of a sampling of policy development ideas offered by academics and legal scholars.

It is important that questions presented be resolved on campus to encourage faculty to create online courses and to ensure that universities have a reliable catalog of courses to sustain online programs.

## Evaluating Adequacy of Policies

Kenneth D. Salomon (2000)<sup>6</sup>, a practicing copyright law attorney in Washington D.C., has provided the following “Checklist of Issues for Evaluating the Adequacy of Institutional Intellectual Property and Employment Policies and Procedures for Electronic Courseware.”

- Does your institution have an Intellectual Property (“IP”) policy? If so, when was it last reviewed and updated?
- Does your IP policy qualify the institution for the Liability Safe Harbor protections of the Digital Millennium Copyright Act?
- Does your IP policy address the issue of faculty ownership of and economic interest in courseware?
- Do the terms and conditions of faculty employment address the issue of faculty ownership of and economic interest in courseware?
- Is your faculty organized? If so, does the collective bargaining agreement address the issue of faculty ownership of and economic interest in courseware? Has the matter been a formal subject of collective bargaining negotiations?
- Does your IP policy and your terms and conditions of faculty employment distinguish between ownership of traditional academic works (books, articles, lecture notes, syllabi, etc.) and ownership of electronic courseware (Internet, video based, etc.) created by faculty? If so, how and where does your institution implement the distinction?

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<sup>6</sup> Retrieved from <http://www.uoregon.edu/~jqj/ninch/salomon-checklist.htm> [August 26, 2003]

- Does your IP policy and your terms and conditions of faculty employment distinguish between courseware that is created by faculty independently and that which is created within the scope of employment? Does the policy provide clear guidance as to when a work is considered produced within the scope of employment?
- Does your IP policy and your terms and conditions of faculty employment distinguish between works created under grants and those created under contracts with third parties? Does your sponsored research office review all external agreements for IP issues?
- Do your faculty employment policies (or collective bargaining agreement) allow faculty to create courseware for other institutions? If so, does the policy define what role faculty may they play in the delivery, promotion and maintenance of such courseware?
- Does your IP policy and your terms and conditions of faculty employment take into consideration the level of institutional financial, technological and staff resources used by the faculty member to design and create the electronic work in determining ownership and economic interests?
- Do your institutional policies deal with the circumstances under which the institution and the faculty member are permitted to use an electronic course after the faculty member leaves the institution? If continued use of electronic courses by the institution and the faculty member is contemplated, what mechanism has been adopted to effectuate that policy?

- Does your IP policy and your terms and conditions of faculty employment deal with the sharing of revenue between the institution and the faculty member generated by the internal use of course materials?
  - Does your IP policy and your terms and conditions of faculty employment deal with the sharing of revenue between the institution and the faculty member generated by the external use of course materials?
  - Does your IP policy and your terms and conditions of faculty employment define who has the right (and how often) to update or modify an electronic course, and who may expand upon electronic courses? Does the institution and/or the faculty member have the right to require updating of electronic courses? Do your policies cover updating course materials after the faculty member is no longer at the institution?
  - Does a faculty member who created an electronic course have the right of first refusal for the teaching of that course?
  - Have the institution's copyright site rights licenses been reviewed to determine whether the rights granted under the licenses cover the specific technologies employed by the institution for delivery of electronic courses?
  - Is your IP policy coordinated with your patent policy?
  - Does your institution aggressively protect the use of its name and logo?
  - Does your IP policy control the use of the institution's name and logo on electronic courseware?
  - Is there a single office responsible for administering your IP policy and providing guidance to faculty on the policy and on copyright and licensing issues?

## **A Policy Checklist for Developing Copyright Ownership Policies**

In addition to Salomon's questions, Kimberly B. Kelley of the University of Maryland, University College, developed the following policy checklist<sup>7</sup> to be used to develop policies for copyright ownership. (2002, pp. 11-15.)

1. The policy should allocate ownership, use and/or revenue.
2. The policy should define what ownership rights students and non-faculty has, if any.
3. The policy should address the issue of revenue sharing.
4. The policy should address the issue of competition usually by referring to the institution's policy concerning competition.
5. The policy should specify the role of agreements between faculty and the institution.
6. The policy should be written in light of federal copyright law and state law on employees of public educational institutions, when applicable.
7. The policy should address whether the amount of institutional and/or other resources will affect ownership and use.
8. The policy should set up procedures for administration of the policy.

### **Questions about Ownership, Use, and Compensation Related to a Successful Copyright Ownership Model**

Ubell (2001) offered the following question(s) as posed by the Stevens Ad Hoc Committee on Web-based Intellectual Property Rights<sup>8</sup> when they asked: "Who owns the rights to Web-based courses?" (p. 47)

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<sup>7</sup> See Kelley's paper for detailed descriptions of these salient points.

When institutions market and distribute e-courses, who own the rights?

- 1) Should copyright be in the name of the Web course developer or the university?
- 2) Under what conditions, if any, may copyright be assigned to the school?
- 3) If a school engages faculty to develop online courses, may the institution have someone else teach them.
- 4) May the university license e-courses to third parties, such as other schools, publishers, or distributors?
- 5) Do Web faculty have portability rights, allowing them to take their e-courses when they leave?
- 6) Should schools pay course developers separately from their normal compensation for online instruction?
- 7) If course developers receive portability rights — that is, if they can teach their e-courses elsewhere — should the next school compensate the originating college?
- 8) Should developers receive additional payment in the event the school licenses online courses?
- 9) In the event another faculty member at the originating school teaches an e-course, should the developer receive extra compensation?

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<sup>8</sup> The Stevens Ad Hoc Committee on Web-based Intellectual Property Rights was a group of faculty members and administrators at Stevens Institute of Technology and included Stanley Clark, Dilhan Kalyon, Lawrence Levine, David Naumann, Keith Sheppard and Robert Ubell (chair). The committee was formed by Graduate School Vice President Joseph J. Moeller, Jr. and School of Engineering Dean Bernard Gallois. They drafted the intellectual property and copyright policy adopted by Stevens in February 2001 [See Appendix F.]

### **Stevens Institute of Technology Intellectual-Property Policy Model**

Carnevale (2000) reported that both administrators and faculty at New Jersey's Stevens Institute of Technology have found its Intellectual-Property Policy (See Appendix F) to be a model for others to emulate. Carnevale (2000) explained that the Steven's policy gives many rights and rewards to faculty for creating and developing online courses. Simply put, faculty members at Stevens are paid to develop online courses, and they own the material they develop and control how and when the material can be used. Meanwhile, the institution controls the copyrights of the online courses and manages the courses' distribution.

Stevens Institute of Technology officially adopted the recommended policies in February 2001 (Ubell, 2001).

Ubell (2000) likened the Steven's policy to a "traditional publishing agreement," and claimed, "The model has been in place for centuries" (p. 47). He claimed the faculty would benefit from Steven's handling of promotion and distribution chores.

### **Themes Related to Creating Policy Language**

What makes the Stevens Institute of Technology Web-Based Course Intellectual Property Rights policy stand out for faculty and administrators to emulate are themes that are worthy of analysis and consideration.

Among these themes are use of incentives for faculty creation of Web-based courses; belief that ownership is not an "all or nothing" proposition; fostering of creation, dissemination, and storage of Web-based information; and adaptability of contracts, policies, and guidelines (Ubell, 2001, p. 46).

While these themes are not the only discernible subjects contained in the recommendations, they encompass some basic human values that help make the policy work on both an emotional level and tangible one for many faculty and administrators. Six major considerations make Stevens policies recommendations stand out (Ubell, p. 46).

**Copyright:** A course developer's copyright to an entirely online course should be assigned to the school when the faculty members agrees to enter a contract with the institution to develop it.

**Compensation:** The agreement should compensate developers for creating entirely online courses in "virtual space" — a provision that should not apply to online material presented in conventional classrooms in "physical space." Faculty should also be compensated separately for entirely online instruction.

**Use:** While copyright for an entirely online course is assigned to the university, the faculty member retains the right to use course material components (notes, slides, exercises, and so on) for other purposes, such as conventional classroom teaching, publication, and lectures.

**Portability:** In the event the developer delivers an entirely online course at other schools, a usage license fee should be paid to the originating institution.

**Third-party licensing:** If an entirely online course is licensed to a third party — publisher, corporation, distributor, or other school — the course developer should receive a percentage of the net licensing revenue.

**Additional compensation and limitations:** If an entirely online course is taught at the school by someone other than the developer, the faculty member who created it should receive a percentage of the net tuition revenue.

The six named ideals can be narrowed down to three primary concerns for faculty and institutions — ownership, use, and compensation.

### **Unbundling Rights**

Ubell (2001) specifically cited the concept of “unbundling”<sup>9</sup> of copyrights and intellectual property rights as a major step in creating policies and guidelines that faculty and institutions can appreciate and accept for use in the academic world.

“Unbundling” is an important component of creating negotiable policies related to copyright and intellectual property. When “unbundling” of copyright or intellectual rights occurs, it is acknowledged that “rights are extendable and divisible, and that they exist in the context of relationships” (Ubell, 2001, p. 46). Unbundling recognizes that lecture notes, slides, quizzes, and other course materials can have many properties and uses.

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<sup>9</sup> The concept of “unbundling” was first articulated by the Consortium for Educational Technology for University Systems (CETUS) (1997), the consortium jointly sponsored by California State University, State University of New York, and City University of New York. CETUS created a cornerstone publication, “Ownership of New Works at the University: Unbundling of Rights and the Pursuit of Higher Learning” (See Appendix F), which presented ideas designed to move university faculty and administrators forward cooperatively and productively into a realm of intellectual property ownership based on mutual benefit. Stevens applied the concepts of “unbundling” The basic premise of the publication is that an “all-or-nothing” approach to copyright ownership rarely leads to the most constructive resolution of issues related to the subject of copyright in higher education. It explains the concept of the unbundling of rights; includes a set of illustrative scenarios that applies the “Three Cs”— creative impetus, control, and compensation — in the determination of the owner of the copyright to a newly created work, and ends with some recommendations for university administration and faculty to consider as they establish policy and enter into contracts.

While it is impossible to cover every possible scenario related to copyright, every effort should be made to cover as many possibilities as imaginable, or to at the very least, create guidelines for application of copyright law.

It is important to keep the overall mission of education in sight when trying to create workable solutions to copyright issues in an educational setting.

In essence, unbundling of rights related to copyright and intellectual property give the owners more control over each component of an online course.

As an example, Ubell (2001) considered a slide program. For instance, a slide program can be viewed in a classroom, or be submitted to a periodical for use as an illustration, or perhaps be used in a Web-based presentation and viewed by people all over the world. With this in mind, it is easy to imagine any component of instruction as an object that can be used in various ways. As independent objects, under copyright law, the owner of the object(s) has the right to sell these items separately.

The concept of “unbundling” or breaking copyrightable works in to “objects” is a premise upon which many intellectual policies and guidelines have been based, including the Stevens Institute of Technology policy

Stevens and CETUS<sup>10</sup> are not the only groups to offer intellectual property guidelines and models. Many scholars and lawmakers have offered suggestions for policy creation related to the ownership of faculty works.

### **Some Possible Scenarios**

Lawmakers and scholars include State of Washington Assistant Attorney General Clark Shores (1996), and Dan L. Burk (1997), an associate professor at Seton Hall University Law School. Shores outlined some minimum issues that should be addressed when producing intellectual property rights policies at universities.

“(1) Whether the university will assert an ownership interest in some faculty works, and, if so, which ones;

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<sup>10</sup> See Appendix F for Stevens Institute draft recommendations and Appendix C for CETUS recommendations.

(2) The means by which the university will obtain an ownership interest in those faculty works not considered “work-for-hire”; and

(3) The process by which determinations of institutional interest will be made (Shores, 1996, p. 2).

Burk (1997) offered some suggestions related to allocation of copyright ownership. Briefly, he outlined three “option sets” with basic assumptions. For example, in Option Set 1, it is assumed that the faculty members are authors of the works produced in conjunction with their employment at an institution. This option allows the faculty members to surrender management and control of the work(s) to the institution for some type of return of special remuneration. This might include a royalty of some type.

In Option Set 2, Burk (1997) suggested that the faculty member is an employee of the institution. That is, all work is done as “work-for-hire.” This could mean that the faculty creator might be given the right to use the work in classes, but the institution retains control of the work. Another option in this set might be that the faculty member could control and manage the licensing of the work. In this option, the institution would have a right to royalties.

In Burk’s (1997) Option Set 3, the institution is considered the author with an assignment of rights or license to the faculty members. In this option, the faculty creator could be given exclusive rights or a royalty as discussed in Option 2. With this option, the faculty member may be considered an independent contractor and authorship could vest with the faculty member, or an assignment of rights or license to use the materials could be given to the institution such as in Option 1.

Burk (1997) maintained that these three options were not the only ways to allocate copyright ownership in an educational setting, but rather, were just starting points. He noted that it is important to remember that ownership of copyrighted work may be divided in myriad ways depending upon time, geography, usage, and other limitations.

### **The Sociological Meaning of Problem Definition**

Online course copyright policies that are mutually beneficial to the author/creator and the university need to recognize some of the dynamics of the policy creation process, including especially the social meaning of “problem definition.”

In a *Journal of Higher Education* article, Welsh (2000) defined the social meaning of problem definition.

“...Problem definition” is a process of how “social conditions” are transformed into “social or policy problems” through the symbolic interaction of human beings in a social environment. Understood sociologically, problem definition is important in the policy process because it determines the status of an issue on the public policy agenda. The problem definition process also shapes the range of acceptable and viable alternatives to the problem conditions, as well as the design of specific solutions or interventions aimed at responding to them.... Social conflict over the significance of a social problem or policy issue and the design of alternatives to it suggests that the problem definition process is neither linear nor deterministic....

When the problem-definition process is viewed as symbolic interaction that is designed to promote or deny social agendas, six critical dimensions emerge (Rochefort & Cobb, 1994, p. 14–21). These concepts provide a basis for operationalizing the study of problem definition in the policy process.

**1. Causality.** The way a policy problem is defined generally includes statements about its origins. A statement about the cause of a policy problem is a strategic choice that shapes the course, content and outcomes of a policy debate.

**2. Significance.** The significance of any social problem is not self-evident but emerges out of the struggle of groups to define reality. Problems that are identified as the most significant are likely to move upward on the public policy agenda. Perceptions of lesser severity tend to move problems downward on the list of policy priorities.

**3. Incidence.** Perceptions and information that demonstrates increasing frequency of a problem creates pressure for decisive policy intervention.

**4. Novelty.** Novel policy problems attract considerable public attention because they are out of the ordinary, but they also lack familiar policy tools to deal with them.

**5. Scope.** The scope of an issue refers to the range of actors whose interests are directly affected by the problem.

Proponents of an initiative may seek to expand their political base

by establishing claims of relevancy to designated constituents. That is, they may seek to elevate their definition of the problem through arguments of a broad social impact.

**6. Ownership.** Policy issues generally include a struggle over who has authority to delineate the causes, consequences, and solutions to social problems. A variety of groups may seek rights to participate in the definition and resolution of a policy issue. Ownership of an issue determines who sits on the sidelines and who participates as a policy issue progresses (Welsh (2000) pp. 674-677).

Welsh (2000) contended, “Like all forms of property, legitimate course ownership is an organization of ideas that becomes an intersubjective and material reality because people act on the basis of their beliefs about it” (pp. 674-677).

In other words, people are emotionally involved with the concept of ownership and what that means to them individually.

Welsh (2000) argued, “effective policy making is likely to require considerable attention to the process in which the policy problem is collectively defined, including an assurance that the broader context of higher education and its impact on faculty working conditions are taken into account” (p. 694).

It behooves universities and faculty to agree early on during talks about copyright ownership issues and how they pertain to the needs of both faculty and the university.

It is vital that faculty take a stand for protecting the ownership of copyrights in a university setting. Welsh (2000) added “education in the future depends on the ability and inclination of faculty leaders to become more ‘activistic’ or ‘entrepreneurial’ in problem-definition and policy-formation processes” (p. 694).

Welsh (2000) contended that his study of how the Kansas State Board of Regents developed its intellectual property policy showed “that faculty may need to become more effective in setting the agenda for higher education policy formation by taking the lead in defining the policy problems higher education faces, rather than merely reacting to or resisting agendas established by others.” (p. 694).

Welsh (2000) pointed out “significant” questions for policy makers at higher educational facilities should include: “What is the policy process engendering these changes? What conflicts occur in its course? How are these policy problems being defined? Who has the power and authority to define them” (p. 674).

Welsh’s (2000) explanation of problem definition should help faculty and university administrators sort out priorities based on the status of the issues of copyrights in a university setting. Once the two sides of the copyright issue agree on the “range of acceptable and viable alternatives,” they can “design a set of specific solutions.” The very premise of this thesis is to aid in finding these ranges of viable alternatives and solutions by providing a foundation upon which to build upon existing knowledge of copyright ownership at U.S. universities.

## **Research Question**

**“How have universities and faculty created online course copyright policies that are mutually beneficial to the author/creator and the university?”**

The literature reviewed for this thesis revealed that many academics have written on concerns about copyright law and its application to faculty ownership of online courses. Legal scholars and university administrators have discussed the pros and cons of myriad methods of producing copyright policies that benefit both the universities and their faculty members. While there were no definitive “best practices”<sup>11</sup> found through the Literature Review, there are options.

Initially, I thought the ownership issue “who owns online courses?” was the primary question to be solved; however, after reviewing the literature, I have concluded that “who owns what?” is not the real issue at hand. Instead, the literature points to certain themes related to existing copyright policies and work done by scholarly and legal minds, perhaps the most important of which is “unbundling of rights,” that provide the basis for creating tangible, logical, university copyright policies, that address themes of use, control, and revenue.

With this conclusion in mind, I have determined that the primary research question is “How have universities and faculty created online course copyright policies that are mutually beneficial to the author/creator and the university?”

This question raises some complex, interesting, and important issues that need to be addressed at all education institutions.

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<sup>11</sup> Kelley’s (2000) survey sought to determine “best practices” among universities related to intellectual property copyright policies, but the criteria of that survey did not match the criteria set forth for this thesis, so her definitions of “best practices” were not used.

Every higher educational facility should have guidelines for policies and/or contracts related to copyright and intellectual property with clear definitions about what constitutes copyrighted material and how it will be treated in university settings.

The scope of this question is broad and covers such themes as the “bundling” or “unbundling” of rights, compensation, ownership and use of copyrighted materials (Burk, 1997; Carnevale, 1999; Clark, 1998; Gorman, 1998; Guernsey, 1998; Noble, 1997, 1998; Salomon, 2000; Shores, 1997; Thompson, 1999; Twigg, 2000; Young, 1998, 1999; Ubell, 1999, 2000).

While copyright and intellectual property rights issues are not new in academia, the Internet has changed the nature of how these issues are perceived in higher education. Over the past decade, Internet use has become a preferred mode of knowledge sharing. With this preference, more and more higher education facilities and faculty members are creating online courses, also known as “courseware” for use by the individual colleges and universities. (Carnevale, 1999; Gorman, 1998; Noble, 1997; 1998; Twigg, 2000).

Traditionally, most faculty members have been far more concerned with the creation and dissemination of knowledge than about who owns the courses and the obligations created after the course is created. (Carnevale, 1999; Gorman, 1998; Noble, 1997; 1998; Twigg, 2000). Consequently, most of the work done related to copyright and intellectual property issues has been done by publishers and libraries.

Education is changing — where students once walked the halls abuzz with discussions of classroom-based academics, today the hum is of digital technology alive with chats and discussion boards in virtual classrooms on personal computers.

The content of these classes is still created by faculty, who by tradition, have been the copyright owners of the course material they have produced for classroom use at universities (AAUP 1997, 1999; AAU Task Force, 1994; Twigg, 2000).

Due to the ever-increasing use of Internet and digital sources for the creation and dissemination of information in education, the creation of mutually beneficial policies and contracts for faculty and university is of utmost importance to academia now more than ever. Therefore, the creation of a resource tool for university faculty and administrators to use to help create policies is crucial.

## **Chapter 3**

### **Methodology**

For universities and faculty members, getting over the emotional issues and down to the foundation of what is truly at stake in a copyright policy for online courses is of major concern.

To avoid that problem, the goal of this thesis is to provide a resource tool to help universities and faculty sort out the necessary elements of the thinking process that will help them create an online course copyright policy that is mutually beneficial to the author/creator and the university.

After reviewing the literature and studies by Lape (1992) and Packard (2001) as well as the 2001-2002 surveys of 79 2-year and 4-year universities conducted by Kelley, Bonner, McMichael and Pomea (2002), it became apparent that faculty and universities across the United States were attempting to understand the complexities of copyright ownership as applied to online courses as well as other faculty works. It was at this point that the idea of creating a resource tool to ease the burden for these people came into being.

With literally hundreds of universities from which to choose, it was logical to look at the universities represented in the Lape (1992), Packard (2001) and Kelley, Bonner, McMichael and Pomea (2002) studies and surveys. With more than 150 possibilities and the limitations of a thesis, it made sense to limit the selection to a manageable number. With that in mind, many of the universities were selected based on Kelly's (2002) survey from which respondents deemed certain universities in their opinion were worthy of note for reasons known only to themselves.

Other universities were selected based on literature related to acknowledgement those policies being of interest. This would apply to Steven's Institute of Technology. Others were chosen at random based solely on location. These selections included the University of South Florida and Florida State University.

The one known factor for all selected universities was that they had policies related to copyright in place. Other than that, no other information was known and the criteria was applied to each one based on the knowledge gained as a reader of the literature.

### **Criteria determination**

The criteria for the creation of this resource tool was developed from the literature. As themes, issues, and questions bubbled forth from the literature, the themes were noted. For example, the initial basic questions are represented by Table A-2, which was the second table created after Table A-1, which is a discussion of the work of Lape (1992) and Packard (2002).

Table A-2 is a basic table meant to be simplistic and informational. It is a reflection of the basic information needed to start basic research into other university policies. Table A-2 identifies the 21 universities by identification number, name and date of the copyright policy creation or revision as well as URL addresses and dates of retrieval. Table A-2 answers the questions:

- 1) Does the university have a copyright policy?
- 2) Does the university have a separate courseware or online copyright policy?

3) Does the university claim copyright ownership of faculty-produced works?

As a reader of the literature, the goal for developing the criteria and the comparison points to be applied to each policy was simple. The question was, “If I were a faculty member or an administrator at a university, what resource tool would help me make intelligent knowledge-based decisions that would be mutually beneficial to both the faculty member (s) and the university?”

The literature offered a gamut of questions from educators, attorneys, copyright experts, university round tables and consortiums. As the themes issued forth, basic themes and questions developed, so with the end user in mind, the resource tool is meant to be flexible and living. It is a starting point.

The thinking process for this thesis was often sporadic and disjointed; however, over time the pieces started to fit together much like a mental jigsaw puzzle. Again, with the thought in mind that this entire thesis is a resource tool to be used as a guide for starting the process of creating online copyright policies based on the work of others at universities in the United States.

The questions also called comparison points applied to each policy were developed a result of the questions asked and sometimes answered or defined by the literature. Furthermore, the number of questions is infinite depending on the direction any one person may choose to follow. However, the first 25 questions reflect the four basic themes which bared themselves repeatedly in the literature: The scope of this question is broad and covers such themes as the “bundling” or “unbundling” of rights, compensation, ownership and use of copyrighted materials (Burk, 1997; Carnevale, 1999; Clark, 1998;

Gorman. 1998; Guernsey, 1998; Noble, 1997, 1998; Salomon, 2000; Shores, 1997; Thompson, 1999; Twigg, 2000; Young, 1998, 1999; Ubell, 1999, 2000).

### **Disassembling the Policies**

The tool is a review of 21 university policies and offers a foundation for universities and faculty members to use as a starting point for creating their own policies and contracts.<sup>12</sup> The bulk of the criteria are based on surveys conducted in 1990-91 by Laura Lape (1992) and replicated in 1999-2000 by Ashley Packard (2001) along, with the 2001-2002 surveys of 79 2-year and 4-year universities<sup>13</sup> conducted by Kimberly B. Kelley, Kimberly Bonner, James S. McMichael and Neal Pomea (2002).

Altogether (Lape, 1992; Packard, 2002; and Kelley, et al., 2002) studied approximately 150 universities. Criteria for this thesis are based on the aforementioned research as well as gleaned from the literature and will be documented as presented.

Table A-2<sup>14</sup> identifies the 21 universities by identification number, name and date of the copyright policy creation or revision as well as URL addresses and dates of retrieval.

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<sup>12</sup> I have not attempted to rank or rate any of the policies since this is not a quantitative work.

<sup>13</sup> Many of the universities selected were based on the recommendations of respondents to Kelley's (2002) survey. Selected were: University of Kansas, University of Alabama, University of Washington, University of Massachusetts, University of North Texas, University of Texas System, University of Chicago, Stanford University, University of Illinois, University of Minnesota, University of Wisconsin and Brigham Young University.

<sup>14</sup> Table A-2 ID 1 University of Alabama (Revised April 12, 2001)

<http://www.ua.edu/academic/facsen/handbook/append-h.html>

[March 10, 2003]

Table A-2 ID 2 University of Chicago (Revised April 27, 1999)

<http://www.uchicago.edu/adm/ura/guidelines/G200/223.html>

[March 10, 2003]

Table A-2 ID 3 University of Kansas (Revised Feb. .23.2003)

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[http://www.kansasregents.org/download/aca\\_affairs/policymanual/kborpm2242003.pdf](http://www.kansasregents.org/download/aca_affairs/policymanual/kborpm2242003.pdf)  
[March 10, 2003]  
Table A-2 ID 4 University of Illinois (Revised July 22, 2002)  
[http://www.vpaa.uillinois.edu/policies/courseware\\_download.asp#report](http://www.vpaa.uillinois.edu/policies/courseware_download.asp#report)  
[March 10, 2003]  
Table A-2 ID 5 University of Georgia (Revised Nov. 19, 2001)  
<http://www.usg.edu/admin/policy/600.phtml>  
[March 11, 2003]  
Table A-2 ID 6 University of Indiana (May 9, 1997)  
<http://www.indiana.edu/~rugs/respol/intprop.html>  
[March 11, 2003]  
Table A-2 ID 7 University of Massachusetts (Dated Copyright 1998)  
<http://www.umass.edu/research/intelgrad.html> [March 12, 2003]  
Table A-2 ID 8 University of Minnesota (May 15, 2001)  
<http://www1.umn.edu/regents/policies/academic/IntellectualProperty.pdf> [March 14, 2003]  
Table A-2 ID 9 University of North Texas  
[http://www.unt.edu/planning/UNT\\_Policy/volume3/16\\_1\\_1.html](http://www.unt.edu/planning/UNT_Policy/volume3/16_1_1.html) [March 14, 2003]  
Table A-2 ID 10 San Diego University (Revised Aug. 11, 2000) Distance Education Policy – (Revised April 6, 2000)  
<http://www.rohan.sdsu.edu/dept/senate/sendoc/distanced.ed.apr2000.html>  
Intellectual Property Policy —  
[http://gra.sdsu.edu/dra/Intell\\_Property\\_5-9-00\\_Final.htm](http://gra.sdsu.edu/dra/Intell_Property_5-9-00_Final.htm)  
Table A-2 ID 11 Michigan State University (Revised June 22, 2001)  
<http://www.msu.edu/unit/facrecds/FacHand/developcopyright.html> [March 14, 2003]  
Table A-2 ID 12 Stanford University (Revised Dec. 22, 1998)  
[http://www.stanford.edu/dept/DoR/rph/rph\\_pdf/5-2.pdf](http://www.stanford.edu/dept/DoR/rph/rph_pdf/5-2.pdf)  
[March 10, 2003]  
Table A-2 ID 13 Stevens Institute of Technology  
[http://www.stevens.tech.edu/it/services/policy\\_statements.shtml](http://www.stevens.tech.edu/it/services/policy_statements.shtml)  
Table A-2 ID 14 University of Texas System (Revised Jan. 20, 2003) Standard policy —  
<http://www.utexas.edu/academic/otl/policy.html> [March 11, 2003]  
Table A-2 ID 14 University of Texas System Plain English version [March 11, 2003]  
<http://www.utexas.edu/academic/otl/PlainEnglishPolicy.html>  
Table A-2 ID 14 University of Texas System Education materials (contracts)  
<http://www.utsystem.edu/ogc/intellectualproperty/edmatrls.htm>  
[March 11, 2003]  
Table A-2 ID 15 University of Wisconsin (Revised Nov. 24, 1997)  
<http://www.uwsa.edu/fadmin/gapp/gapp27.htm> [March 11, 2003]  
Table A-2 ID 16 University of Washington (Revised Dec. 20, 2000)  
<http://www.washington.edu/faculty/facsenate/handbook/04-05-07.html> [March 10, 2003]  
Table A-2 ID 17 Brigham Young University (Not Dated)  
<http://ipsinfo.byu.edu/ippolicy.htm> [March 11, 2003]  
Table A-2 ID 18 University of South Florida (Revised October 2000)  
<http://www.acad.usf.edu/handbook/hbchapter7.html> [March 10, 2003]  
Table A-2 ID 19 Florida State University <http://www.fsu.edu/Books/Faculty->

Table A-2 also answers the basic questions:

- 4) Does the university have a copyright policy?
- 5) Does the university have a separate courseware or online copyright policy?
- 6) Does the university claim copyright ownership of faculty-produced works?<sup>15</sup>

The purpose of Table A-2 is basic. It reflects whether each university has a copyright policy and/or a separate courseware (online) policy in place. It also notes if the university claims or disclaims copyright ownership and any noted exceptions. The questions are answered with a simple “yes” or “no” and include an asterisk (\*) to indicate special notes are provided in the footer of each table.

Faculty and university officials seeking information from other universities related to copyright policies might use Table A-2 as a tool from which to begin gathering policies that may relate to their initial idea of how they would like to create their policies. For example, if a policy review committee were trying to research universities with separate courseware policies, they might use Table A-2 to find policies designated as such.

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[Handbook/Ch6/Ch6.19.html](#) [March 14, 2003]

20 University of North Carolina

(Revised Nov. 8, 2002) <http://www.northcarolina.edu/legal/policymanual/500.2.pdf>

[March 11, 2003]

Primer: <http://www.northcarolina.edu/legal/copyright/PrimerOnCopyrightOwnership.cfm>

[March 11, 2003]

Table A-2 ID 21 Winston-Salem State University (Revised Sept. 21, 2002)

<http://gorams.wssu.edu/intellect/Approved%20Copyright%20policy.htm> [March 11,

2003]

<sup>15</sup> \*Notes clarifying information provided.

At a quick glance, one could see that out of the 21 universities, only four have separate courseware policies. If this is of interest, one could visit those Web sites and retrieve the policy (ies) for analysis.

At the same time, one could note which universities claim university copyright ownership as well as which universities do not claim university copyright ownership.<sup>16</sup> While every educational institution is different and has varying needs, one interested in creating policies and contracts should be able to read the information compiled in this thesis and choose a selection of policies from which to emulate new policies and contracts to fit their unique situations. (For an additional selection of universities to review, see Appendix B for listings of universities studied by Packard, 2001).

Additional tables are: Table A-3, Table A-4, Table A-5 and Table A-6. Table A-3 breaks down universities with separate courseware policies; Table A-4 describes universities with pro university copyright ownership policies with exceptions; Table A-5 depicts universities with pro faculty copyright ownership policies under certain conditions (N\*),<sup>17</sup> Table A-6 depicts universities with pro university ownership without exceptions.

All the university policies retrieved from the World Wide Web were downloaded in Adobe Acrobat (pdf) format, Microsoft Word, or copied and pasted in plain text format. There were no fees or expenses involved other than the cost of paper and printer ink to print the material for review.

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<sup>16</sup> One could also note any special exceptions denoted by the asterisk (\*).

<sup>17</sup> N\* indicates that while the university does not claim copyrights initially they will claim copyright under certain conditions such as “extraordinary” use of university resources as defined by individual policies.

It was not my intention to create a “form” to fill out, but rather to provide faculty and administrators an easy to understand document to be used as a springboard to help create policies and contracts related to copyright ownership of online courses.

### **Comparison Points**

The following comparison points<sup>18</sup> were developed after reviewing the literature and deriving what seemed to be valid questions presented by scholars at various universities, they then were then applied to each university’s copyright policy, and a simple “yes” or “no” answer was given.<sup>19</sup>

Q1: Does copyright policy exist?

Q2: Does copyright policy address online courses or digital courses directly?

Q3: Does separate policy exist related to copyright of online courses or distance education courses delivered via WWW or Internet?

Q4: Does policy adhere to federal copyright laws?

Q5: Does policy define copyright ownership related to online courses or courseware?

Q6: Does policy define what works fall under copyrightable instructional materials?

Q7: Does policy define ownership rights related to traditional teaching materials?

Q8: Does policy define copyright compensation?

Q9: Does university assert ownership of faculty works? If so, are definitions provided to aid in understanding?

Q10: Does university assert that faculty owns works produced? If so, are there definitions in place to aid understanding?

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<sup>18</sup> Comparison points are general in nature and may be expanded by individuals based up their policy needs and recommendations. These comparison points are by no means all inclusive of every possible question.

<sup>19</sup> Q stands for Question.

- Q11: If university asserts that faculty owns works, is there a method in place for university use or university licensing?
- Q12: If university asserts ownership under certain conditions, are these conditions clearly defined?
- Q13: Does policy address the issue of ownership based on use of university resources or not?
- Q14: Is there a provision for naming the university as owner if it initiates the work?
- Q15: Does the faculty member retain ownership and copyrights if he/she is the creator of the work?
- Q16: Does policy define copyright use?
- Q17: Is the language clear and free of “legalese?”
- Q18: Is there room for negotiations written into the policy?
- Q19: Does the policy “unbundle” the rights of copyright?
- Q20: Does the policy address “academic freedom” by name or definition?
- Q21: Does the author of the copyrighted material have the right to update the material unfettered by the university?
- Q22: Does the author of the work have control to limit use and changes to his/her original work?
- Q23: Do authors have control of licensing to institutions other than original university?
- Q24: Does policy address multiple authors’ issues?
- Q25: Are there definitions in place for all ownership forms?

When juxtaposed with the other policy questions (see pages 21-28) presented in this thesis, users of this tool should have a useful launch pad from which to build copyright ownership policies, that are mutually beneficial to both faculty and administrators at U.S. universities.

## Chapter 4

### Findings and Discussions

#### Tool Tables Review

The creation of a tool for faculty and university administrators to use as a foundation for the creation of individual copyright and online courseware policies is the primary goal of this thesis. With this mindset, a small sampling of universities was gleaned from the Literature Review. Some universities were chosen from the listings of Lape (1992), Packard (2001) and Kelley (2002). Other universities were chosen a random based on an Internet search using the search term: “university copyright policy.”

While some universities fall into distinct categories such as pro-university copyright ownership or pro-faculty copyright ownership, others fall into unique categories such as those having separate courseware policies. (Tables A-3, A-4, A-5 and A-6 reflect some of the possible combinations of how university copyright policies may be viewed.<sup>20</sup>)

#### Table A-3 Universities with separate courseware policies<sup>21</sup>

There are four universities studied that have separate courseware policies pertaining to distance education and/or online courses.

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<sup>20</sup> By no means are these categories the only possibilities for analysis of policies; however, for the narrow focus of this thesis these were deemed apropos.

<sup>21</sup> Table A-3-ID 2 University of Chicago

<http://www.uchicago.edu/adm/ura/guidelines/G200/223.html>

Table A-3-ID 3 University of Kansas

[http://www.kansasregents.org/download/aca\\_affairs/policymanual/kborpm2242003.pdf](http://www.kansasregents.org/download/aca_affairs/policymanual/kborpm2242003.pdf)

Table A-3-ID 4 University of Illinois

[http://www.vpaa.uillinois.edu/policies/courseware\\_download.asp#report](http://www.vpaa.uillinois.edu/policies/courseware_download.asp#report)

Table A-3-ID 13 Stevens Institute of Technology

[http://www.stevens.tech.edu/it/services/policy\\_statements.shtml](http://www.stevens.tech.edu/it/services/policy_statements.shtml)

Included in this group are the University of Chicago, University of Kansas, University of Illinois and Stevens Institute of Technology.

All four universities have copyright policies and all have a separate policy pertaining to online courses or digital courses. Out of the 21 universities reviewed, this sampling represents 19 percent or approximately one-fifth of the universities sampled. One hundred percent adhere to the federal copyright laws.

All four define copyright ownership as it relates to online courses and to traditional instructional materials. Each university policy also addresses the issue of copyright compensation.

Two universities, University of Kansas and University of Illinois assert university ownership of work produced by faculty. These two universities also provide definitions to aid in the understanding of what constitutes faculty work the university may claim.

The University of Chicago and Stevens Institute of Technology also assert university ownership of faculty work under certain circumstances, such as use of “substantial resources,” which is defined by each university’s policy. Stevens Institute of Technology sometimes acknowledges faculty ownership of certain work per policy.

Question (Q11) does not apply to the University of Chicago and University of Illinois.

Both the University of Kansas and Stevens Institute of Technology have methods in place for university licensing procedures.

All four universities have clear definitions in place related to the conditions of university assertion of copyright ownership of faculty works.

All four-university policies address use of university resources. One hundred percent have methods in place to name the university as copyright owner if it initiates the work.

Under certain defined conditions, all four universities held that the creator of the work retained ownership of certain copyrights related to the work.

All four universities defined copyright use. One university, the University of Chicago used “legalese” and made its policy hard to understand. The other three had relatively easy-to-understand language.<sup>22</sup>

Three universities include language related to “leaving room for negotiation” in their courseware policies. The University of Chicago did not.

The concept of “unbundling” of copyrights was not mentioned by the University of Kansas or University of Illinois and was not considered by the University of Chicago. Only the Stevens Institute of Technology embraced the idea.

The University of Chicago did not address the issue of academic freedom, while the other three universities all did.

The University of Kansas, University of Illinois and Stevens Institute of Technology all agreed that faculty authors have a right to update their materials unfettered by the university; that authors have control of licensing to other institutions other than the original university. The trio of universities also addressed the issues of multiple authors and provided definitions for all ownership forms.

Questions 21 through 25 could not be applied to the University of Chicago.

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<sup>22</sup> This is the author’s perception of what is easy to understand or not understand. In most cases, if “legalese” or legal terms were omitted, the policy seemed to be easier to understand in layman’s terms. Each policy should be reviewed and judged upon its overall merit to the individual.

In summary, these four universities represent a small but growing trend toward separate policies pertaining to courseware or distance learning policies related to copyright ownership.

**Table A-4 Universities with Pro University copyright ownership\*<sup>23</sup>**

Out of 21 universities studied, six out of 21 had pro-university<sup>24</sup> ownership policies. This includes some universities with separate courseware policies. The six universities include the University of Kansas, University of Illinois, University of Georgia, University of Massachusetts, Michigan State University and University of South Florida.<sup>25</sup>

All six universities had copyright policies in place. While Michigan State University and the University of South Florida did not address online courses or digital courses directly, the remaining four did.

The University of Kansas and University of Illinois had separate courseware policies, while the remaining four did not.

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<sup>23</sup> Table A-4 ID 3 University of Kansas  
[http://www.kansasregents.org/download/aca\\_affairs/policymanual/kborpm2242003.pdf](http://www.kansasregents.org/download/aca_affairs/policymanual/kborpm2242003.pdf)

Table A-4 ID 4 University of Illinois

[http://www.vpaa.uillinois.edu/policies/courseware\\_download.asp#report](http://www.vpaa.uillinois.edu/policies/courseware_download.asp#report)

Table A-4 ID 5 University of Georgia <http://www.usg.edu/admin/policy/600.phtml>

Table A-4 ID 7 University of Massachusetts

<http://www.umass.edu/research/intelgrad.html>

Table A-4 ID 11 Michigan State University

<http://www.msu.edu/unit/facrecds/FacHand/develpcopyright.html>

Table A-4 ID 18 University of South Florida

<http://www.acad.usf.edu/handbook/hbchapter7.html>

<sup>24</sup> Pro-university copyright policy means that the university typically claims at least partial if not all of the copyrights of faculty-produced works within that particular university's definitions.

All six universities adhered to federal copyright laws and five universities except the University of South Florida addressed the copyright ownership of online courses or courseware in their policies. All universities gave definitions of what works fall under copyrightable instructional materials.

All universities defined copyright ownership right related to traditional teaching materials. All six universities defined copyright compensation.

All six universities addressed copyright compensation.

All six universities asserted ownership of faculty work, and defined the meanings. Although each university claims the copyrightable works of faculty initially, under certain circumstances, faculty authors may retain ownership rights as defined by individual university policies.

While the University of Illinois and University of Georgia do not assert that faculty owns works produced, the remaining universities do with definitions provided about when this would occur.

If a university asserts ownership under certain conditions, only the University of South Florida did not clearly define the conditions.

All six universities addressed the issue of ownership based on use of university resources as it related to copyright ownership.

All six universities had written provisions about naming the university as owner if it initiates the work.

The University of Kansas and the University of Florida allows faculty members to retain certain copyright ownership rights within certain definitions.

All six universities defined copyright use.

For the most part, only the University of South Florida policy as deemed harder to understand due to “legalese.”

The University of Kansas and University of Illinois had built-in provisions for negotiations in their policies. University of Georgia could not be determined based on the language used and the University of Massachusetts, Michigan State University and University of South Florida did not appear to have negotiations for copyrights mentioned in their policies.

The University of Kansas and University of Illinois addressed the issue of “unbundling of rights,” while the University of South Florida did not mention it.

It could not be determined by the language used if the University of Georgia, University of Massachusetts, Michigan State University addressed the term of “unbundling.”

Academic Freedom was addressed by the University of Kansas, University of Illinois and University of Georgia. The University of Massachusetts, Michigan State and University of South Florida did not address it in their copyright policies.

Only the University of South Florida did not allow changes to copyrighted materials without university involvement.

Again, only the University of South Florida did not allow author of creative works to control limit of use and changes to his/her original work.

The University of Kansas, University of Illinois, University of Georgia, and Michigan State allowed authors to control licensing of his/her work with other universities. University of South Florida did not.

All universities except University of South Florida addressed multiple authors' issues in policy.

The University of Massachusetts and University of South Florida did not have definitions in place for all ownership forms.

**Table A-5 Universities with Pro University Copyright Ownership<sup>26</sup>**

Four universities could be separated from the 21 as being Pro University Copyright Ownership. The universities are University of Chicago, University of Minnesota, Brigham Young University and Florida State University.<sup>27</sup>

All four pro-university ownership universities had copyright policies. Of the four, the University of Chicago and Florida State University addressed online courses and digital courses. None of the four had separate policies. All adhered to the federal copyright laws.

Split in half, two universities, the University of Chicago and Florida State University both defined copyright ownership as related to online courses or courseware. All four universities defined traditional teaching materials as copyrightable. All four defined copyright compensation.

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<sup>26</sup> Table A-5 ID 2 University of Chicago  
<http://www.uchicago.edu/adm/ura/guidelines/G200/223.html>

Table A-5 ID 8 University of Minnesota  
<http://www1.umn.edu/regents/policies/academic/IntellectualProperty.pdf>

Table A-5 ID 17 Brigham Young <http://ipsinfo.byu.edu/ippolicy.htm>

Table A-5 ID19 Florida State University <http://www.fsu.edu/Books/Faculty-Handbook/Ch6/Ch6.19.html>

<sup>27</sup> Table A-5 ID 2 University of Chicago  
<http://www.uchicago.edu/adm/ura/guidelines/G200/223.html>

Table A-5 ID 8 University of Minnesota  
<http://www1.umn.edu/regents/policies/academic/IntellectualProperty.pdf>

Table A-5 ID 17 Brigham Young <http://ipsinfo.byu.edu/ippolicy.htm>

Table A-5 ID19 Florida State University <http://www.fsu.edu/Books/Faculty-Handbook/Ch6/Ch6.19.html>

All four universities have definitions in place related to university ownership and how it will be determined for aid in understanding.

All four universities in this category assert university ownership with explanations of this meaning. In cases when a faculty member may retain the copyrights, only Florida State University did not have a method in place for university use or university licensing. All four universities define conditions upon which it will assert ownership of copyrights.

All four universities address the issue of ownership based on use of university resources and also all have provisions for naming the university as copyright owner if the university initiates the work.

Only Florida State University does not allow the faculty to retain ownership and copyrights if he/she is the creator of the work.

All four university policies defined copyright use. There is question as to whether the language used by the University of Chicago and Florida State University is free of legalese.

None of the universities addresses negotiations in their policies pertaining to copyrights. None of the four addressed “unbundling of rights” or academic freedom by name or definition.

It did not appear that any of the four universities allowed the author of works control to limit use or change original works. None of the universities allowed the authors to control licensing to other institutions.

It could not be determined if the University of Chicago had definitions in place for all ownerships form. Brigham Young did not, while the University of Chicago and Florida State University did.

## Table A-6 Universities with Pro Faculty Copyright Ownership N\*<sup>28</sup>

Ten universities, of the 21 examined, declared that while the university does not claim copyrights initially, it will claim copyright under certain conditions such as “extraordinary” use of university resources, as defined by individual policies. These 10 universities might be considered pro-faculty ownership. The 10 universities are University of Alabama, University of Indiana, University of North Texas, San Diego State University, Stanford University, University of Texas System, University of Wisconsin, University of Washington, University of North Carolina, and Winston-Salem State University.

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<sup>28</sup> Table A-6 ID 1 University of Alabama

<http://www.ua.edu/academic/facsen/handbook/append-h.html>

Table A-6 ID 6 University of Indiana <http://www.indiana.edu/~rugs/respol/intprop.html>

Table A-6 ID 9 University of North Texas

[http://www.unt.edu/planning/UNT\\_Policy/volume3/16\\_1\\_1.html](http://www.unt.edu/planning/UNT_Policy/volume3/16_1_1.html)

Table A-6 ID 10 San Diego University [http://gra.sdsu.edu/dra/Intell\\_Property\\_5-9-00\\_Final.htm](http://gra.sdsu.edu/dra/Intell_Property_5-9-00_Final.htm)

Table A-6 ID 12 Stanford University [http://www.stanford.edu/dept/DoR/rph/rph\\_pdf/5-2.pdf](http://www.stanford.edu/dept/DoR/rph/rph_pdf/5-2.pdf)

Table A-6 ID 14 University of Texas System

<http://www.utexas.edu/academic/otl/policy.html>

Table A-6 ID 14 University of Texas System Plain English version.

<http://www.utexas.edu/academic/otl/PlainEnglishPolicy.html>

Table A-6 ID 14 University of Texas System Education materials (contracts)

<http://www.utsystem.edu/ogc/intellectualproperty/edmatrls.htm>

Table A-6 ID 15 University of Wisconsin <http://www.uwsa.edu/fadmin/gapp/gapp27.htm>

Table A-6 ID 16 University of Washington

<http://www.washington.edu/faculty/facsenate/handbook/04-05-07.html>

Table A-6 ID 20 University of North Carolina

<http://www.northcarolina.edu/legal/policymanual/500.2.pdf>

Table A-6 ID 21 Winston-Salem State University

<http://gorams.wssu.edu/intellect/Approved%20Copyright%20policy.htm>

All 10 universities had a copyright policy in existence, however, only University of North Texas, San Diego University, Stanford University, University of Texas System, and University of North Carolina policies addressed online or digital courses directly. None of the 10 had separate courseware policies. All adhered to federal copyright guidelines. All 10 universities defined copyrightable instructional materials in their policies; all defined rights of ownership related to traditional teaching materials; and all defined copyright compensation (some more clearly than others.)

All 10 universities indicated that while they do not claim ownership of faculty works initially, under certain circumstances such as “extraordinary” use of university resources, they might claim the work. Each university gave definitions related to this issue.

All asserted that faculty own the scholarly works at least initially. All 10 universities had methods in place for university use and/or university licensing. All 10 defined conditions under which they would claim copyrightable works.

All 10 university policies addressed the issue of ownership based on use of university resources; and all 10 named provisions for naming the university as owners if it initiated the work. All 10 supported faculty ownership for creators of copyrightable work and defined copyright use.

Nine of the universities had clear language except or the University of Indiana. It was unclear by the language used by the University of Alabama, University of Indiana and the University of Washington if there was room for negotiations between the faculty and university related to copyrights. All other universities in this grouping were open to negotiations related to copyrights with faculty.

At six universities, it was not clear if the concept of “unbundling” of copyrights was being used. It did appear that the University of North Texas, San Diego University, Stanford University, and University of Texas System was attempting to define copyrightable “objects” in their policies.

Four out of the 10 addressed the issue of “academic freedom” either by name or concept in their policies. These were University of North Texas, San Diego University, Stanford University, and University of Texas System.

In all 10 universities, the author of copyrightable material may change it without interference from the university.

All 10 universities offer authors control to limit use and changes to his/her original work and to control licensing of the original work to other institutions other than the original university.

Nine of the 10 universities appeared to address multiple author issues in their policies.

The University of Indiana did not appear to address definitions for all forms of ownership, and it was not possible to determine by the language used if the University of Alabama or University of Washington did or not. All others defined ownership terms.

## **Discussion of a selected policy**

### **Looking deeper: University of South Florida**

This particular copyright policy was chosen because the copyright policy consisted of only six paragraphs, which is relatively short compared to the majority of policies provided by most universities. (Since the policy is no longer available, it is included for informational purposes only. The following was derived from information posted on the University of South Florida's Web site March 10, 2003. The page is no longer available.)

The following points of interest were included in the University of South Florida Copyright Policy consisting of six paragraphs.

- 1) Recognized authors as copyright owner; then
- 2) Claimed work if author of work used university resources;
- 3) Noted exceptions to claims of copyrightable work, but did not use clear language.
- 4) Did not mention online courses specifically.
- 5) Had separate Web policy claiming copyright for anything posted on its Web site.
- 6) University had 60 days to determine if it wanted to claim rights to any works.

The University of South Florida described its copyright policy briefly in its faculty handbook posted on the Internet. Under University Copyright Policy USF 0-105, the university recognized that works are copyrighted when fixed to any medium including documents on the Internet or World Wide Web. In this particular section, USF seemed particularly interested in fair use, which is not of concern for the purposes of this thesis.

However, in the section titled Inventions and Works USF 0-300 CBA Art. 1, USF defined copyrighted works according to federal copyright guidelines and contended that the author owned the work under the following, “If a work is made in the course of independent efforts without use of university resources, facilities or property, the work is the property of the employee.”

The policy continued with the notice that the “if the work is made with the use of university resources, facilities or property, the work is the property of the university and the employee shall share in any proceeds from that work.”

Note, the policy stated, “if the work is made with the use of university resources, facilities or property, the work is the property of the university.” This could be interpreted that any work done using any university resources including office space, computers, paper, etc. would make the work owned by the university.

The policy went on to name exceptions saying, “ exceptions include books, articles and similar works intended for the dissemination of research and scholarship, or works developed without the use of appreciable university support and used solely for the purpose of assisting or enhancing the employee's instructional assignment.” At best, USF’s policy was unclear.

“If a work falls under that designated as property of the university, the employee must disclose the work and the circumstances of its creation to the Vice President for Research. The university has 60 days to make a determination whether the university will seek an interest in the work. The university and the employee will then reach agreement that reflects the interests of both parties.”

Another interesting point in the policy is that the University had up to 60 days to determine if it would seek interest in the work. This statement appeared to take into account a “20/20 hindsight” theory. If the university deemed a copyrightable work to be worth its interest, it would seek ownership. There is no mention of predetermination or methods for faculty to rebut the policy. There is no mention of how the agreement will be reached to reflect the interests of both parties.

This brief discussion is just an illustration of how the wording of policies is important to the understanding of a policy by all who are expected to understand and abide by it. When developing policies, word choice should be of utmost importance.

### **How to use the resource tool**

#### **Scenario**

- 1) A university and its faculty want to create a new online copyright policy. The administrators decide they need to look at samples of other policies. In this case, they have chosen to look at a variety of policies. They look at Tamara Patzer’s thesis: “University Copyright Policies for Online Courses: An Evaluative Resource Tool for Unbundling Rights of Use, Control and Revenue.” After reading it and learning about the basics of the issues, they decided to use the resource tool. Initially, they look at Table A-2 and proceed with a basic exploration. See figure 1, 2, 3, 4, 5, and 6.

## **Chapter 5**

### **Conclusions**

Since there is no “one size fits all” answer to creating a university copyright policy to satisfy all needs for all people, one goal of this thesis was to help faculty and university administrators understand the issues involved in creating a copyright policy that focuses on online courses (also known as Web courses) courseware, or new media.

The Literature Review pointed out that with no clear overriding legal guidelines available through the court system, and nothing more than tradition guiding some universities and faculty members as to the ownership and rights of use of faculty-produced online materials, at a very minimum now is the time to put university copyright policies and guidelines in writing. It would behoove universities and faculty to hammer out clear, legally binding contracts that protect both parties — i.e., the university and the faculty member(s). At least, all universities and colleges should have policies addressing copyright related issues pertaining to online courses and all forms of copyrightable materials produced by faculty and students.

Such policies need to be in place due to the ever-increasing use of Internet and digital sources for the creation and dissemination of information in education.

As a proponent for the unbundling of copyrights and written contracts and policies, I am aware that contracts may not be the answer for all occasions; however, a well-written document legally binding upon all parties can only help create a mutual understanding between those parties involved, and may, in fact, help keep open the lines of communication regarding academic creativity.

This thesis provided a starting point for this complex transaction in the form of a living, flexible resource tool, and included some basic background about copyright law, relevant case law related to “work-for-hire,” and relevant academic freedom issues. This resource tool reviewed 21 U.S. universities and answered some basic questions about their copyright policies and general trends toward pro-university or pro-faculty copyright ownership.

The limitations of this thesis tool are that while there are hundreds of colleges and universities in the United States, this thesis only reviewed 21. However, its weakness is also its strength, since this resource tool is not meant to be a definitive work, but a foundation upon which others can build upon in the future. With hundreds of universities in the United States, a small sampling of 21 is just the cornerstone of a living, flexible document, which can be expanded, updated, defined, and developed. For example, a Web site could be created starting with the initial 21 universities described in the tables and added to infinitum.<sup>29</sup>

Another limitation is there are only 25 comparison points, i.e., questions. Again, these initial 25 comparison points could be expanded, developed, and added upon to create a more comprehensive assessment tool. The comparison points can be as simple or as complex as one needs them to be for any given purpose related to copyright policies at U.S. universities.

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<sup>29</sup> This could be a full-time job for some dedicated individual, since policies are constantly being revised and updated.

Yet another limitation is interpretation of meaning (s) within each given policy. Certain passages<sup>30</sup> may be interpreted differently by others who read the document, especially in the case where no definitions were provided by the university (ies).

This is true of almost any document, and again users of the tool may delete or expand the information as they choose for their individual needs.

Time and date of information retrieval may also be a limitation. For example, when a tool user tries to access them, some policies may not exist due to revisions or changes in individual policies. However, in most cases, the users of the tool will be directed to a new policy or be told the Web site is no longer in existence. Dead URL or Web site links are another potential problem in using the tool in the future. However, unless a university ceases to exist, the information should remain available either via the Internet or through written sources.

Certainly, the general premise of using existing university copyright policies upon which to build new ones is a valid procedure. This resource tool is a starting point. Now that the groundwork has been laid, others can use the tool to create online course copyright policies that could benefit to the author/creator and/or the university.

The resource tool created can be a valuable asset to any university faculty/administrator team seeking to create new copyright policies related to online courses. Even without downloading any specific policies, faculty and university administrators could easily draw conclusions about online copyright policies just by referencing Table A-2, which gives the basic information of whether or not the university

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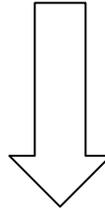
<sup>30</sup> See Looking deeper: University of South Florida, page 59.

policy leans toward university ownership of copyright policy or toward faculty ownership policies. This in itself is an excellent resource tool for those users who already know the direction they wish to pursue for their own online policies. The remaining tables, A-3, A-4, A-5 and A-6, are tailored even more specific copyright concerns. Thus, the purpose of the resource tool does not direct users to any specific university or policy, but instead, aids the user in finding a selection of policies, that may help individuals develop their own policies for their unique situations.

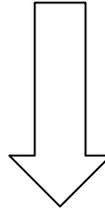
In the end, the resource tool can be used by either faculty or university members with very different results depending upon the user's needs. The tool helps save time, money and human resources.

**Figure 1: Sample Process Flow Chart for using  
Table 3 Universities with Separate Coureware Polcies**

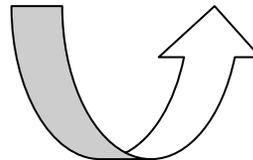
Step 1: Choose an ID number and cross reference it with a university on list. For example, choose ID 2, which is University of Chicago. Choose a question.



Step 2: Choose any question: For example, choose question Q9. Does university assert ownership of faculty works? If so, are definitions provided to aid in understanding?

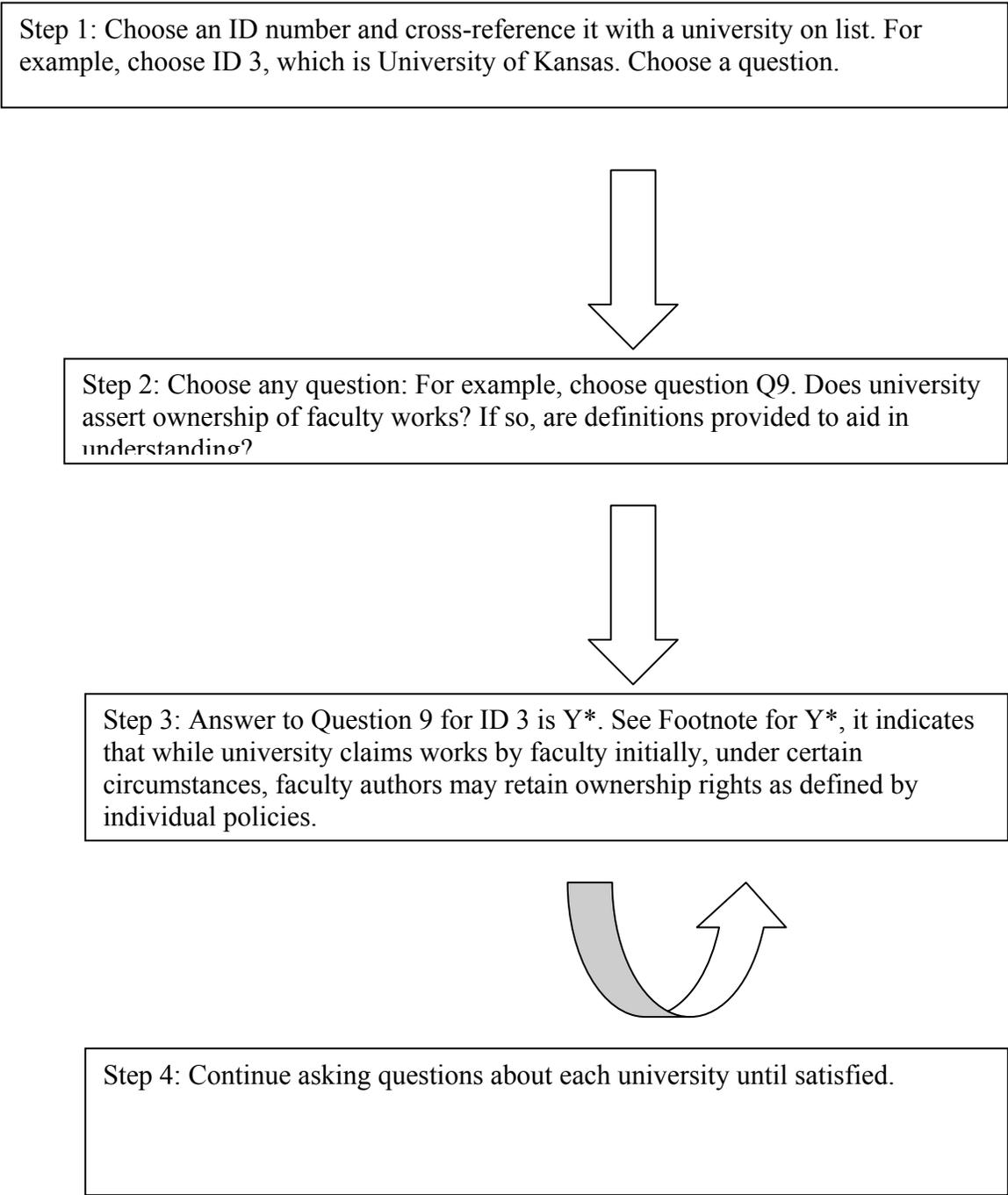


Step 3: Answer to Question 9 for ID 2 is Y\*. See Footnote for Y\*, it indicates that while university claims works by faculty initially, under certain circumstances, faculty authors may retain ownership rights as defined by individual policies.

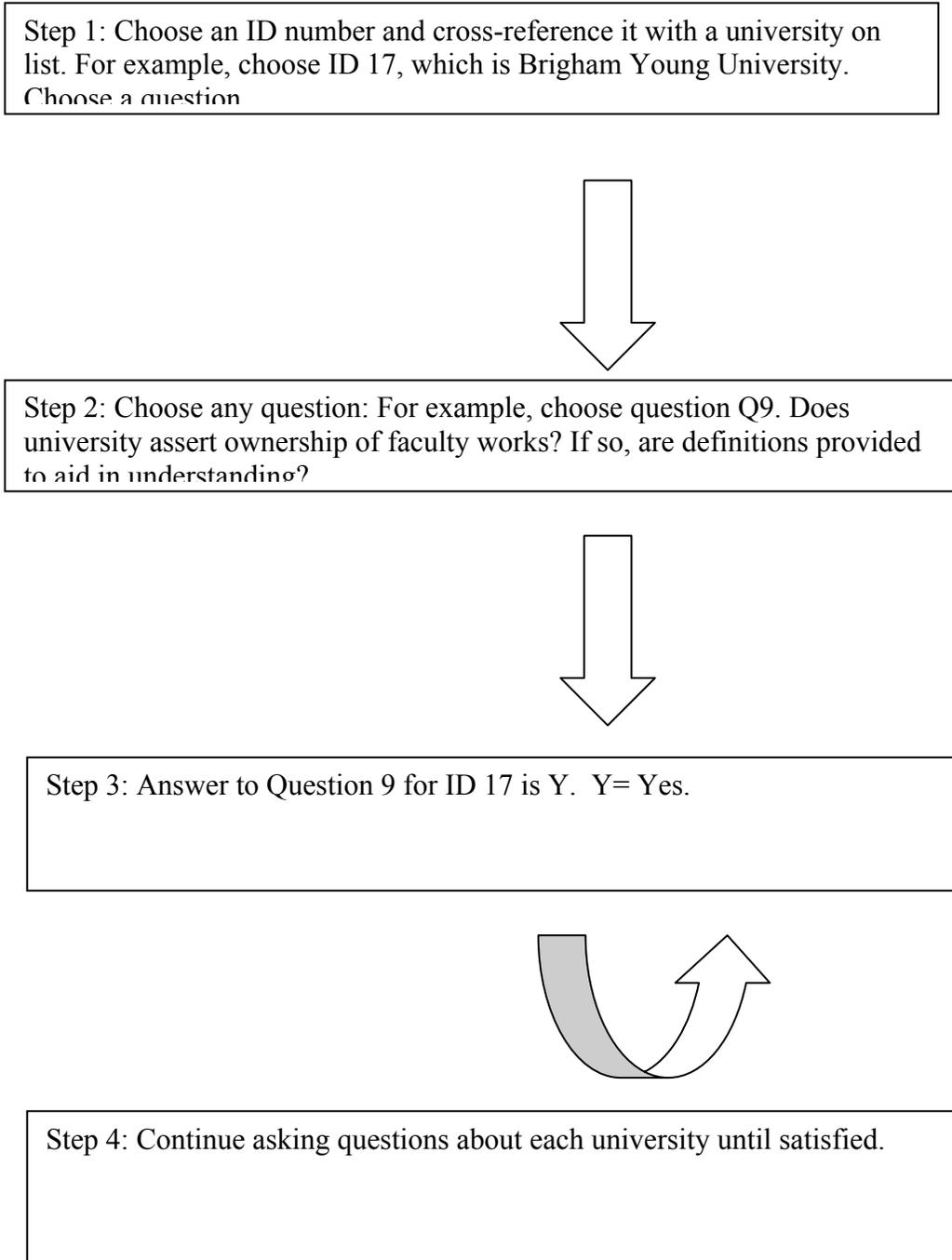


Step 4: Continue asking questions about each university until satisfied.

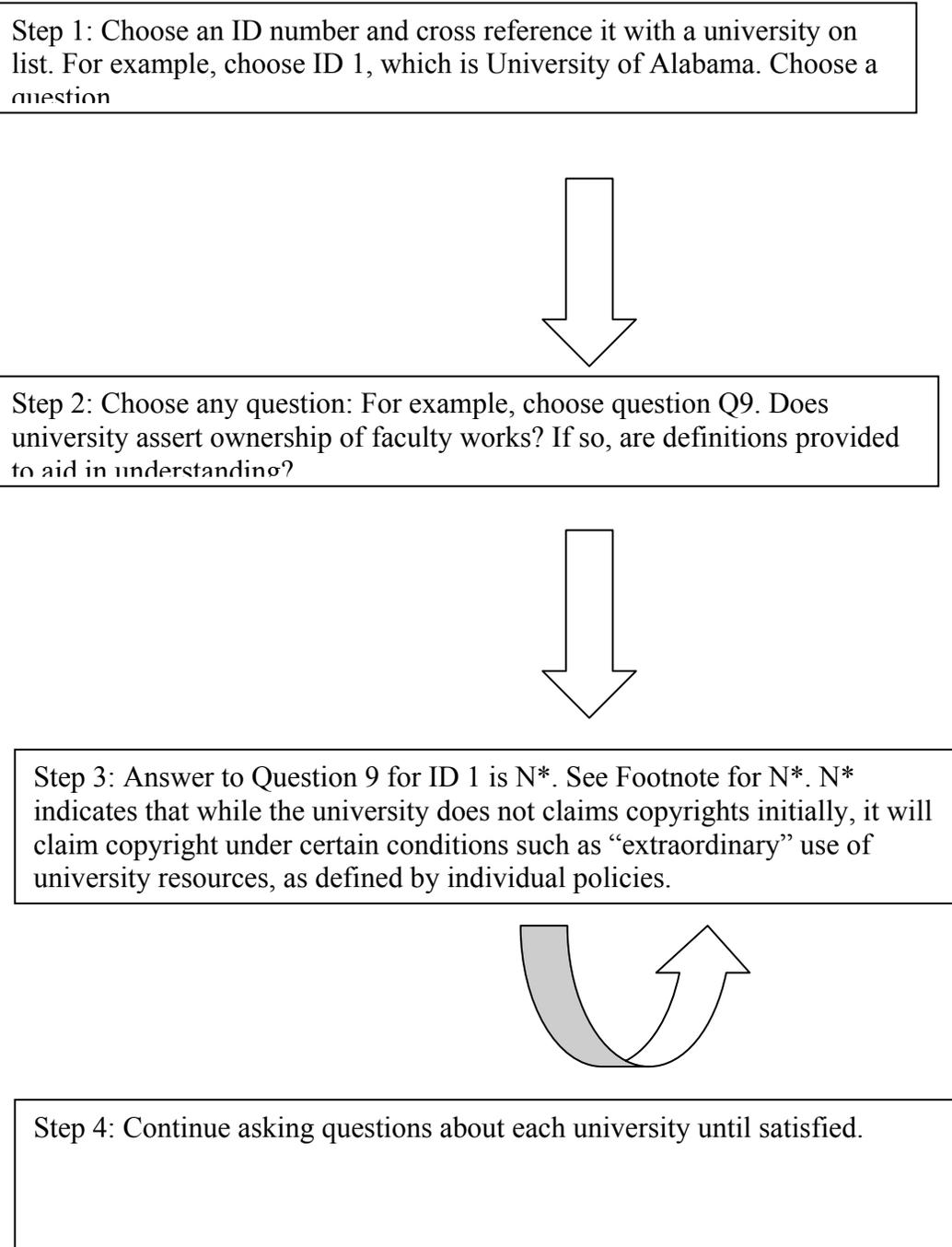
**Figure 2: Sample Process Flow Chart for using  
Table 4 Universities with Pro University Copyright Policies**



**Figure 3: Sample Process Flow Chart for using  
Table 5 Universities with Pro University Ownership Policies**



**Figure 4: Sample Process Flow Chart for using  
Table 6 Universities with Pro Faculty Ownership N\***



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## **Appendices**

APPENDIX A: TABLES

Table 1-A Trends in Academe regarding rights of university professors related to copyright issues

Based on research by Lape (1990-91) and Packard (2000)

[See Appendix B for List of Universities Surveyed]

Trend Definition	Lape 1990-91	Packard 2000	Trend +/-
Number of universities studied with written policies related to copyright	59	66	+
Number of universities studied without written policies related to copyright	11	1	-
Number of universities studied with draft forms only related to copyright	5	3	-
Universities claiming faculty work (with use of substantial resources)	42	57	+
Universities attempting to define “substantial use” in dollar amounts.	2	1	-
Universities claiming faculty work (excluding use of libraries, etc.)	16	20	+
Allowing faculty to retain copyright ownership to literary work.	16	49	+
Control of Property	• No breakout	12	No basis
Academic Freedom Language	18	29	+
Distinguish software from other copyright work	19	19 (Not necessarily the same schools.)	=
Software incorporated into policies	• No breakout	34	No basis
Separate Policies Related to Software	5	5 (Not necessarily the same schools)	=
Software treated in patent policies	4	2	-
Work for Hire	25	37	+

Table A-1 continued Trend Definition	Lape 1990-91	Packard 2000	Trend +/-
University claim works of people hired to produce works	9	12	+
Universities claim commissioned work	10	23	+
University accepts “work-for-hire” within meaning of Copyright Act. (Stipulates “work-for-hire” agreements are signed prior to start of work.	6	18 (within meaning of Copyright Act or statement claiming work developed within scope of employment.)	+
Joint Ownership	18	5	-
Non-exclusive, royalty-free licenses for university use of faculty work	10	16	+
Share of income via royalty to professor if university claims ownership	46	50 (not the case if works are classified as “work-for-hire”)	+
Creative control retained by faculty over works claimed by university	5	7	+
Revision rights retained by professors	7	10 (only one entitled professor to make work)	+
Grants authors to use claimed work for new works	1	6	+
Allows professors to unilateral control of work used outside university	0	0	=
Transfer of work back to professor is commercialization did not take place in certain amount of time.	6	16 (few are mandatory)	+
Interpretation/Adjudication	Not mentioned	33	No basis
Binding Arbitration	Not mentioned	3	No basis
Fairness issue of university officials making decisions	0	0	=

Table A-1 continued Trend Definition	Lape 1990-91	Packard 2000	Trend +/-
Enforcement provisions	Noted, but no breakout.	8	No basis
Confusing language, inconsistency	Not mentioned in survey, but noted in text.	Not mentioned in survey, but noted in text.	No basis
Academic freedom language used	26%	46%	+
Universities disclaiming traditional scholarly work	23%	71%	+

ID# Name of University (with revision dates if applicable)	<p style="text-align: center;"><b>TABLE A-2</b></p> <p style="text-align: center;"><b>World Wide Web URL addresses for policies with retrieval dates</b></p>	<p>Copyright Policy Y=Yes N=No SY=Separate Courseware policy</p>	<p>Pro U claims university ownership Y=Yes N=No * Notes<sup>31</sup></p>
1 University of Alabama (Revised April 12, 2001)	<a href="http://www.ua.edu/academic/facs/en/handbook/append-h.html">http://www.ua.edu/academic/facs/en/handbook/append-h.html</a> [March 10, 2003]	Y	N*
2 University of Chicago (Revised April 27, 1999)	<a href="http://www.uchicago.edu/adm/ura/guidelines/G200/223.html">http://www.uchicago.edu/adm/ura/guidelines/G200/223.html</a> [March 10, 2003]	Y, SY	Y
3 University of Kansas (Revised Feb. 23, 2003)	<a href="http://www.kansasregents.org/download/aca_affairs/policymanual/kborpm2242003.pdf">http://www.kansasregents.org/download/aca_affairs/policymanual/kborpm2242003.pdf</a> [March 10, 2003]	Y, SY	Y*
4 University of Illinois (Revised July 22, 2002)	<a href="http://www.vpaa.uillinois.edu/policies/courseware_download.asp#report">http://www.vpaa.uillinois.edu/policies/courseware_download.asp#report</a> [March 10, 2003]	Y, SY	Y*
5 University of Georgia (Revised Nov. 19, 2001)	<a href="http://www.usg.edu/admin/policy/600.phtml">http://www.usg.edu/admin/policy/600.phtml</a> [March 11, 2003]	Y	Y*
6 University of Indiana (May 9, 1997)	<a href="http://www.indiana.edu/~rugs/respol/intprop.html">http://www.indiana.edu/~rugs/respol/intprop.html</a> [March 11, 2003]	Y	N*
7 University of Massachusetts (Dated Copyright 1998)	<a href="http://www.umass.edu/research/intelgrad.html">http://www.umass.edu/research/intelgrad.html</a> [March 12, 2003]	Y	Y*
8 University of Minnesota (May 15, 2001)	<a href="http://www1.umn.edu/regents/policies/academic/IntellectualProperty.pdf">http://www1.umn.edu/regents/policies/academic/IntellectualProperty.pdf</a> [March 14, 2003]	Y	Y

<sup>31</sup> Notes\* Y\* indicates that while university claims works by faculty initially, under certain circumstances, faculty authors may retain ownership rights as defined by individual policies. N\* indicates that while the university does not claims copyrights initially they will claim copyright under certain conditions such as “extraordinary” use of university resources as defined by individual policies.

<b>ID# Name of University (with revision dates if applicable)</b>	<b>TABLE A-2 World Wide Web URL addresses for policies with retrieval dates</b>	<b>Copyright Policy Y=Yes N=No SY=Separate Courseware policy</b>	<b>Pro U claims university ownership Y=Yes N=No * Notes</b>
9 University of North Texas	<a href="http://www.unt.edu/planning/UNT_Policy/volume3/16_1_1.html">http://www.unt.edu/planning/UNT_Policy/volume3/16_1_1.html</a> [Mach 14, 2003]	Y	N*
10 San Diego University (Revised Aug. 11, 2000)	Distance Education Policy – (Revised April 6, 2000) <a href="http://www.rohan.sdsu.edu/dept/senate/sendoc/distanced.ed.apr2000.html">http://www.rohan.sdsu.edu/dept/senate/sendoc/distanced.ed.apr2000.html</a> Intellectual Property Policy — <a href="http://gra.sdsu.edu/dra/Intell_Property_5-9-00_Final.htm">http://gra.sdsu.edu/dra/Intell_Property_5-9-00_Final.htm</a>	Y	N*
11 Michigan State University (Revised June 22, 2001)	<a href="http://www.msu.edu/unit/facrecds/FacHand/developcopyright.html">http://www.msu.edu/unit/facrecds/FacHand/developcopyright.html</a> [March 14, 2003]	Y	Y*
12 Stanford University (Revised Dec. 22, 1998)	<a href="http://www.stanford.edu/dept/DoR/rph/rph_pdf/5-2.pdf">http://www.stanford.edu/dept/DoR/rph/rph_pdf/5-2.pdf</a> [March 10, 2003]	Y	N*
13 Stevens Institute of Technology	<a href="http://www.stevens.tech.edu/it/services/policy_statements.shtml">http://www.stevens.tech.edu/it/services/policy_statements.shtml</a> [March 10, 2003] See Appendix E.	Y, SY	
14 University of Texas System (Revised Jan. 20, 2003)	Standard policy — <a href="http://www.utexas.edu/academic/otl/policy.html">http://www.utexas.edu/academic/otl/policy.html</a> [March 11, 2003] Plain English version [March 11, 2003] <a href="http://www.utexas.edu/academic/otl/PlainEnglishPolicy.html">http://www.utexas.edu/academic/otl/PlainEnglishPolicy.html</a> Education materials (contracts) <a href="http://www.utsystem.edu/ogc/intellectualproperty/edmatrls.htm">http://www.utsystem.edu/ogc/intellectualproperty/edmatrls.htm</a> [March 11, 2003]	Y	N*
15 University of Wisconsin (Revised Nov. 24, 1997)	<a href="http://www.uwsa.edu/fad/min/gapp/gapp27.htm">http://www.uwsa.edu/fad/min/gapp/gapp27.htm</a> [March 11, 2003]	Y	N*

<b>ID# Name of University (with revision dates if applicable)</b>	<b>TABLE A-2 World Wide Web URL addresses for policies with retrieval dates</b>	<b>Copyright Policy Y=Yes N=No SY=Separate Courseware policy</b>	<b>Pro U claims university ownership Y=Yes N=No * Notes</b>
16 University of Washington (Revised Dec. 20, 2000)	<a href="http://www.washington.edu/faculty/facsenate/handbook/04-05-07.html">http://www.washington.edu/faculty/facsenate/handbook/04-05-07.html</a> [March 10, 2003]	Y	N*
17 Brigham Young (Not Dated) University	<a href="http://ipsinfo.byu.edu/ippolicy.htm">http://ipsinfo.byu.edu/ippolicy.htm</a> [March 11, 2003]	Y	Y
18 University of South Florida (Revised October 2000)	<a href="http://www.acad.usf.edu/handbook/hbchapter7.html">http://www.acad.usf.edu/handbook/hbchapter7.html</a> [March 10, 2003]	Y	Y*
19 Florida State University	<a href="http://www.fsu.edu/Books/Faculty-Handbook/Ch6/Ch6.19.html">http://www.fsu.edu/Books/Faculty-Handbook/Ch6/Ch6.19.html</a> [March 14, 2003]	Y	Y
20 University of North Carolina (Revised Nov. 8, 2002)	<a href="http://www.northcarolina.edu/legal/policymanual/500.2.pdf">http://www.northcarolina.edu/legal/policymanual/500.2.pdf</a> [March 11, 2003] Primer: <a href="http://www.northcarolina.edu/legal/copyright/PrimerOnCopyrightOwnership.cfm">http://www.northcarolina.edu/legal/copyright/PrimerOnCopyrightOwnership.cfm</a> [March 11, 2003]	Y	N*
21 Winston-Salem State University (Revised Sept. 21, 2002)	<a href="http://gorams.wssu.edu/intellect/Approved%20Copyright%20policy.htm">http://gorams.wssu.edu/intellect/Approved%20Copyright%20policy.htm</a> [March 11, 2003]	Y	N*

**Table A-3 Universities with separate courseware policies**<sup>32</sup>

Questions Y= Yes N= No * See footnote N/A=not able to determine by language used	2	3	4	13
Q1: Does copyright policy exist?	Y	Y	Y	Y
Q2: Does copyright policy address online courses or digital courses directly?	Y	Y	Y	Y
Q3: Does separate policy related to copyright of online courses, distance education courses delivered via WWW or Internet exist?	Y	Y	Y	Y
Q4: Does policy adhere to federal copyright laws?	Y	Y	Y	Y
Q5: Does policy define copyright ownership related to online courses or courseware?	Y	Y	Y	Y
Q6: Does policy define what works fall under copyrightable instructional materials?	Y	Y	Y	Y
Q7: Does policy define ownership rights related traditional teaching materials?	Y	Y	Y	Y
Q8: Does policy define copyright compensation?	Y	Y	Y	Y
Q9: Does university assert ownership of faculty works? If so, are definitions provided to aid in understanding?	Y*	Y	Y	Y*
Q10: Does university assert that faculty owns works produced?	N	Y	N	Y*
Q11: If university asserts that faculty owns works, is there a method in place for university use or university licensing?	N/A	Y	N	Y

<sup>32</sup> Table A-3-ID 2 University of Chicago

<http://www.uchicago.edu/adm/ura/guidelines/G200/223.html>

Table A-3-ID 3 University of Kansas

[http://www.kansasregents.org/download/aca\\_affairs/policymanual/kborpm2242003.pdf](http://www.kansasregents.org/download/aca_affairs/policymanual/kborpm2242003.pdf)

Table A-3-ID 4 University of Illinois

[http://www.vpaa.uillinois.edu/policies/courseware\\_download.asp#report](http://www.vpaa.uillinois.edu/policies/courseware_download.asp#report)

Table A-3-ID 13 Stevens Institute of Technology

[http://www.stevens.tech.edu/it/services/policy\\_statements.shtml](http://www.stevens.tech.edu/it/services/policy_statements.shtml) (See Appendix E.)

<b>Table A-3 Universities with separate courseware policies</b> <sup>33</sup> Questions Y= Yes N= No * See footnote N/A=not able to determine by language used	2	3	4	13
Q12: If university asserts ownership under certain conditions, are these conditions clearly defined?	Y*	Y	Y*	Y*
Q13: Does policy address the issue of ownership based on use of university resources or not?	Y	Y	Y	Y
Q14: Is there a provision for naming the university as owner if it initiates the work	Y	Y	Y	Y
Q15: Does the faculty member retain ownership and copyrights if he/she is the creator of the work?	Y	Y	Y	Y
Q16: Does policy define copyright use?	Y	Y	Y	Y
Q17: Is the language clear and free of legalese?	N	Y	Y	Y
Q18: Is there room for negotiations written into the policy?	N	Y	Y	Y
Q19: Does the policy “unbundle” the rights of copyright?	N	N/A	N/A	Y
Q20: Does the policy address “academic freedom” by name or definition?	N	Y	Y	Y
Q21: Does the author of the copyrighted material have the right to update the material unfettered by the university?	N/A	Y	Y	Y
Q22: Does the author of the work have control to limit use and changes to his/her original work?	N/A	Y	Y	Y
Q23: Does authors have control of licensing to other institutions other than original university?	N/A	Y	Y	Y

<sup>33</sup> Table A-3-ID 2 University of Chicago

<http://www.uchicago.edu/adm/ura/guidelines/G200/223.html>

Table A-3-ID 3 University of Kansas

[http://www.kansasregents.org/download/aca\\_affairs/policymanual/kborpm2242003.pdf](http://www.kansasregents.org/download/aca_affairs/policymanual/kborpm2242003.pdf)

Table A-3-ID 4 University of Illinois

[http://www.vpaa.uillinois.edu/policies/courseware\\_download.asp#report](http://www.vpaa.uillinois.edu/policies/courseware_download.asp#report)

Table A-3-ID 13 Stevens Institute of Technology

[http://www.stevens.tech.edu/it/services/policy\\_statements.shtml](http://www.stevens.tech.edu/it/services/policy_statements.shtml) (See Appendix E.)

<b>Table A-3 Universities with separate courseware policies</b> <sup>34</sup> Questions Y= Yes N= No * See footnote N/A=not able to determine by language used	2	3	4	13
Q24: Does policy address multiple authors issues in policy?	N/A	Y	Y	Y
Q25: Are there definitions in place for all ownership forms?	N/A	Y	Y	Y

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<sup>34</sup> Table A-3-ID 2 University of Chicago

<http://www.uchicago.edu/adm/ura/guidelines/G200/223.html>

Table A-3-ID 3 University of Kansas

[http://www.kansasregents.org/download/aca\\_affairs/policymanual/kborpm2242003.pdf](http://www.kansasregents.org/download/aca_affairs/policymanual/kborpm2242003.pdf)

Table A-3-ID 4 University of Illinois

[http://www.vpaa.uillinois.edu/policies/courseware\\_download.asp#report](http://www.vpaa.uillinois.edu/policies/courseware_download.asp#report)

Table A-3-ID 13 Stevens Institute of Technology

[http://www.stevens.tech.edu/it/services/policy\\_statements.shtml](http://www.stevens.tech.edu/it/services/policy_statements.shtml) (See Appendix E.)

**Table A-4 Universities with Pro University copyright ownership<sup>\*35</sup>**

Questions Y= Yes N= No * See footnote N/A=not able to determine by language used	3	4	5	7	11	18
Q1: Does copyright policy exist?	Y	Y	Y	Y	Y	Y
Q2: Does copyright policy address online courses or digital courses directly?	Y	Y	Y	Y	N	N
Q3: Does separate policy related to copyright of online courses, distance education courses delivered via WWW or Internet exist?	Y	Y	N	N	N	N
Q4: Does policy adhere to federal copyright laws?	Y	Y	Y	Y	Y	Y
Q5: Does policy define copyright ownership related to online courses or courseware?	Y	Y	Y	Y	Y	N
Q6: Does policy define what works fall under copyrightable instructional materials?	Y	Y	Y	Y	Y	Y
Q7: Does policy define ownership rights related traditional teaching materials?	Y	Y	Y	Y	Y	Y
Q8: Does policy define copyright compensation?	Y	Y	Y	Y	Y	Y

<sup>35</sup> Table A-4 ID 3 University of Kansas  
[http://www.kansasregents.org/download/aca\\_affairs/policymanual/kborpm2242003.pdf](http://www.kansasregents.org/download/aca_affairs/policymanual/kborpm2242003.pdf)  
 Table A-4 ID 4 University of Illinois  
[http://www.vpaa.uillinois.edu/policies/courseware\\_download.asp#report](http://www.vpaa.uillinois.edu/policies/courseware_download.asp#report)  
 Table A-4 ID 5 University of Georgia <http://www.usg.edu/admin/policy/600.phtml>  
 Table A-4 ID 7 University of Massachusetts  
<http://www.umass.edu/research/intelgrad.html>  
 Table A-4 ID 11 Michigan State University  
<http://www.msu.edu/unit/facrecds/FacHand/developcopyright.html>  
 Table A-4 ID 18 University of South Florida  
<http://www.acad.usf.edu/handbook/hbchapter7.html>

<b>Table A-4 Universities with Pro University copyright ownership*</b> <sup>36</sup> Questions Y= Yes N= No * See footnote N/A=not able to determine by language used	3	4	5	7	11	18
Q9: Does university assert ownership of faculty works? If so, are definitions provided to aid in understanding?	Y*	Y*	Y*	Y*	Y*	Y*
Q10: Does university assert that faculty owns works produced?	Y*	N	N	Y*	Y*	Y*
Q11: If university asserts that faculty owns works, is there a method in place for university use or university licensing?	Y	N	N/A	Y	Y*	Y
Q12: If university asserts ownership under certain conditions, are these conditions clearly defined?	Y	Y*	Y*	Y	Y	N
Q13: Does policy address the issue of ownership based on use of university resources or not?	Y	Y	Y	Y	Y	Y
Q14: Is there a provision for naming the university as owner if it initiates the work	Y	Y	Y	Y	Y	Y
Q15: Does the faculty member retain ownership and copyrights if he/she is the creator of the work?	Y*	Y	Y	Y	Y	Y*
Q16: Does policy define copyright use?	Y	Y	Y	Y	Y	Y

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<sup>36</sup> Table A-4 ID 3 University of Kansas  
[http://www.kansasregents.org/download/aca\\_affairs/policymanual/kborpm2242003.pdf](http://www.kansasregents.org/download/aca_affairs/policymanual/kborpm2242003.pdf)  
Table A-4 ID 4 University of Illinois  
[http://www.vpaa.uillinois.edu/policies/courseware\\_download.asp#report](http://www.vpaa.uillinois.edu/policies/courseware_download.asp#report)  
Table A-4 ID 5 University of Georgia <http://www.usg.edu/admin/policy/600.phtml>  
Table A-4 ID 7 University of Massachusetts  
<http://www.umass.edu/research/intelgrad.html>  
Table A-4 ID 11 Michigan State University  
<http://www.msu.edu/unit/facrecds/FacHand/developcopyright.html>  
Table A-4 ID 18 University of South Florida  
<http://www.acad.usf.edu/handbook/hbchapter7.html>

<b>Table A-4 Universities with Pro University copyright ownership*</b> <sup>37</sup> Y= Yes N= No * See footnote N/A=not able to determine by language used	3	4	5	7	11	18
Q17: Is the language clear and free of legalese?	Y	Y	Y	Y	Y	N
Q18: Is there room for negotiations written into the policy?	Y	Y	N/A	N	N	N
Q19: Does the policy “unbundle” the rights of copyright?	Y	Y	N/A	N/A	N/A	N
Q20: Does the policy address “academic freedom” by name or definition?	Y	Y	Y	N/A	N	N
Q21: Does the author of the copyrighted material have the right to update the material unfettered by the university?	Y	Y	Y	Y	Y	N
Q22: Does the author of the work have control to limit use and changes to his/her original work?	Y	Y	Y	Y	Y	N
Q23: Does authors have control of licensing to other institutions other than original university?	Y	Y	Y	N/A	Y	N
Q24: Does policy address multiple authors issues in policy?	Y	Y	Y	Y	Y	N
Q25: Are there definitions in place for all ownership forms?	Y	Y	Y	N	Y	N

<sup>37</sup> Table A-4 ID 3 University of Kansas  
[http://www.kansasregents.org/download/aca\\_affairs/policymanual/kborpm2242003.pdf](http://www.kansasregents.org/download/aca_affairs/policymanual/kborpm2242003.pdf)  
 Table A-4 ID 4 University of Illinois  
[http://www.vpaa.uillinois.edu/policies/courseware\\_download.asp#report](http://www.vpaa.uillinois.edu/policies/courseware_download.asp#report)  
 Table A-4 ID 5 University of Georgia <http://www.usg.edu/admin/policy/600.phtml>  
 Table A-4 ID 7 University of Massachusetts  
<http://www.umass.edu/research/intelgrad.html>  
 Table A-4 ID 11 Michigan State University  
<http://www.msu.edu/unit/facrecds/FacHand/developcopyright.html>  
 Table A-4 ID 18 University of South Florida  
<http://www.acad.usf.edu/handbook/hbchapter7.html>

<b>Table A-5 Universities with Pro University Copyright Ownership<sup>38</sup></b> Questions Y= Yes N= No * See footnote N/A=not able to determine by language used	2	8	17	19
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Q1: Does copyright policy exist?	Y	Y	Y	Y
Q2: Does copyright policy address online courses or digital courses directly?	Y	N	N	Y
Q3: Does separate policy related to copyright of online courses, distance education courses delivered via WWW or Internet exist?	N	N	N	N
Q4: Does policy adhere to federal copyright laws?	Y	Y	Y	Y
Q5: Does policy define copyright ownership related to online courses or courseware?	Y	N	N	Y
Q6: Does policy define what works fall under copyrightable instructional materials?	Y	Y	Y	Y
Q7: Does policy define ownership rights related traditional teaching materials?	Y	Y	Y	Y
Q8: Does policy define copyright compensation?	Y	Y	Y	Y
Q9: Does university assert ownership of faculty works? If so, are definitions provided to aid in understanding?	Y	Y	Y	Y
Q10: Does university assert that faculty owns works produced?	N	N*	N	N
Q11: If university asserts that faculty owns works, is there a method in place for university use or university licensing?	Y	Y	Y	N
Q12: If university asserts ownership under certain conditions, are these conditions clearly defined?	Y*	Y	Y*	Y

<sup>38</sup> Table A-5 ID 2 University of Chicago

<http://www.uchicago.edu/adm/ura/guidelines/G200/223.html>

Table A-5 ID 8 University of Minnesota

<http://www1.umn.edu/regents/policies/academic/IntellectualProperty.pdf>

Table A-5 ID 17 Brigham Young <http://ipsinfo.byu.edu/ippolicy.htm>

Table A-5 ID19 Florida State University <http://www.fsu.edu/Books/Faculty-Handbook/Ch6/Ch6.19.html>

<b>Table A-5 Universities with Pro University Copyright Ownership<sup>39</sup></b> Questions Y= Yes N= No * See footnote N/A=not able to determine by language used	2	8	17	19
Q13: Does policy address the issue of ownership based on use of university resources or not?	Y	Y	Y	Y
Q14: Is there a provision for naming the university as owner if it initiates the work	Y	Y	Y	Y
Q15: Does the faculty member retain ownership and copyrights if he/she is the creator of the work?	Y	Y	Y	N
Q16: Does policy define copyright use?	Y	Y	Y	Y
Q17: Is the language clear and free of legalese?	N	Y	Y	N
Q18: Is there room for negotiations written into the policy?	N	N	N	N
Q19: Does the policy “unbundle” the rights of copyright?	N	N	N	N
Q20: Does the policy address “academic freedom” by name or definition?	N	N	N	N
Q21: Does the author of the copyrighted material have the right to update the material unfettered by the university?	N/A	N	N	N
Q22: Does the author of the work have control to limit use and changes to his/her original work?	N/A	N	N	N
Q23: Does authors have control of licensing to other institutions other than original university?	N/A	N	N	N
Q24: Does policy address multiple authors issues in policy?	N/A	Y	Y	Y
Q25: Are there definitions in place for all ownership forms?	N/A	Y	N	Y

<sup>39</sup> Table A-5 ID 2 University of Chicago

<http://www.uchicago.edu/adm/ura/guidelines/G200/223.html>

Table A-5 ID 8 University of Minnesota

<http://www1.umn.edu/regents/policies/academic/IntellectualProperty.pdf>

Table A-5 ID 17 Brigham Young <http://ipsinfo.byu.edu/ippolicy.htm>

Table A-5 ID19 Florida State University <http://www.fsu.edu/Books/Faculty-Handbook/Ch6/Ch6.19.html>

**Table A-6 Universities with Pro Faculty Copyright Ownership N\*\*<sup>40</sup>**

Questions Y= Yes N= No See Notes N* N/A=not able to determine by language used	1	6	9	10	12	14	15	16	20	21
Q1: Does copyright policy exist?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Q2: Does copyright policy address online courses or digital courses directly?	N	N	Y	Y	Y	Y	N	N	Y	N

<sup>40</sup> Table A-6 ID 1 University of Alabama

<http://www.ua.edu/academic/facsen/handbook/append-h.html>

Table A-6 ID 6 University of Indiana <http://www.indiana.edu/~rugs/respol/intprop.html>

Table A-6 ID 9 University of North Texas

[http://www.unt.edu/planning/UNT\\_Policy/volume3/16\\_1\\_1.html](http://www.unt.edu/planning/UNT_Policy/volume3/16_1_1.html)

Table A-6 ID 10 San Diego University [http://gra.sdsu.edu/dra/Intell\\_Property\\_5-9-00\\_Final.htm](http://gra.sdsu.edu/dra/Intell_Property_5-9-00_Final.htm)

Table A-6 ID 12 Stanford University [http://www.stanford.edu/dept/DoR/rph/rph\\_pdf/5-2.pdf](http://www.stanford.edu/dept/DoR/rph/rph_pdf/5-2.pdf)

Table A-6 ID 14 University of Texas System

<http://www.utexas.edu/academic/otl/policy.html>

Table A-6 ID 14 University of Texas System Plain English version.

<http://www.utexas.edu/academic/otl/PlainEnglishPolicy.html>

Table A-6 ID 14 University of Texas System Education materials (contracts)

<http://www.utsystem.edu/ogc/intellectualproperty/edmatrls.htm>

Table A-6 ID 15 University of Wisconsin <http://www.uwsa.edu/fadmin/gapp/gapp27.htm>

Table A-6 ID 16 University of Washington

<http://www.washington.edu/faculty/facsenate/handbook/04-05-07.html>

Table A-6 ID 20 University of North Carolina

<http://www.northcarolina.edu/legal/policymanual/500.2.pdf>

Table A-6 ID 21 Winston-Salem State University

<http://gorams.wssu.edu/intellect/Approved%20Copyright%20policy.htm>

Notes\*

Y\* indicates that while university claims works by faculty initially, under certain circumstances, faculty authors may retain ownership rights as defined by individual policies.

N\* indicates that while the university does not claim copyrights initially, it will claim copyright under certain conditions such as “extraordinary” use of university resources, as defined by individual policies.

<b>Table A-6 Universities with Pro Faculty Copyright Ownership</b> N* Questions Y= Yes N= No See Notes N* N/A=not able to determine by language used	1	6	9	10	12	14	15	16	20	21
Q3: Does separate policy related to copyright of online courses, distance education courses delivered via Internet exist?	N	N	N	N	N	N	N	N	N	N
Q4: Does policy adhere to federal copyright laws?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Q5: Does policy define copyright ownership related to online courses or courseware?	Y	N	Y	Y	Y	Y	Y	N	Y	Y
Q6: Does policy define what works fall under copyrightable instructional materials?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Q7: Does policy define ownership rights related traditional teaching materials?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Q8: Does policy define copyright compensation?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Q9: Does university assert ownership of faculty works? If so, are definitions provided to aid in understanding?	N*									
Q10: Does university assert that faculty owns works produced?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

<b>Table A-6 Universities with Pro Faculty Copyright Ownership</b> N* Questions Y= Yes N= No See Notes N* N/A=not able to determine by language used	1	6	9	10	12	14	15	16	20	21
Q11: If university asserts that faculty owns works, is there a method in place for university use or university licensing?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Q12: If university asserts ownership under certain conditions, are these conditions clearly defined?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Q13: Does policy address the issue of ownership based on use of university resources or not?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Q14: Is there a provision for naming the university as owner if it initiates the work.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

Q15: Does the faculty member retain ownership and copyrights if he/she is the creator of the work?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
<b>Table A-6 Universities with Pro Faculty Copyright Ownership N*</b> Questions Y= Yes N= No See Notes N* N/A=not able to determine by language used	1	6	9	10	12	14	15	16	20	21
Q16: Does policy define copyright use?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Q17: Is the language clear and free of legalese?	Y	N	Y	Y	Y	Y	Y	Y	Y	Y
Q18: Is there room for negotiations written into the policy?	N/A	N/A	Y	Y	Y	Y	Y	N/A	Y	Y
Q19: Does the policy “unbundle” the rights of copyright?	N/A	N/A	Y	Y	Y	Y	N/A	N/A	N/A	N/A
Q20: Does the policy address “academic freedom” by name or definition?	N/A	N/A	Y	Y	Y	Y	N/A	N/A	N/A	N/A
Q21: Does the author of the copyrighted material have the right to update the material unfettered by the university?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Q22: Does the author of the work have control to limit use and changes to his/her original work?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

Q23: Does authors have control of licensing to other institutions other than original university?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
<b>Table A-6 Universities with Pro Faculty Copyright Ownership</b> N* Questions Y= Yes N= No See Notes N* N/A=not able to determine by language used	1	6	9	10	12	14	15	16	20	21
Q24: Does policy address multiple authors issues in policy?	Y	Y	Y	Y	Y	Y	Y	N/A	Y	Y
Q25: Are there definitions in place for all ownership forms?	N/A	N	Y	Y	Y	Y	Y	N/A	Y	Y

## APPENDIX B

Universities studied by Lape (1992) and Packard (2000)

Boston University  
California Institute of Technology  
Carnegie-Mellon University  
Case Western Reserve University  
Colorado State University  
Columbia University  
Cornell University  
Duke University  
Georgia Institute of Technology  
Harvard University  
Howard University  
Indiana University at Bloomington  
Johns Hopkins University  
Louisiana State University  
Massachusetts Institute of Technology  
Michigan State University  
New Mexico State University  
New York University  
North Carolina State University  
Northwestern University  
Ohio State University  
Oregon State University  
Pennsylvania State University  
Princeton University  
Purdue University  
Rockefeller University  
Rutgers University  
Stanford University  
State University of New York at Stony Brook  
Texas A&M University  
University of Arizona  
University of California at Berkeley  
University of California at Davis  
University of California at Irvine  
University of California at Los Angeles  
University of California at San Diego  
University of California at San Francisco  
University of Chicago  
University of Cincinnati  
University of Colorado at Boulder  
University of Connecticut  
University of Florida  
University of Georgia

APPENDIX B (continued)

University of Hawaii at Manoa  
University of Illinois at Chicago  
University of Illinois at Urbana-Champaign  
University of Iowa  
University of Kentucky  
University of Maryland at College Park  
University of Miami  
University of Michigan at Ann Arbor  
University of Minnesota-Twin Cities  
University of Missouri at Columbia  
University of New Mexico  
University of North Carolina at Chapel Hill  
University of Pennsylvania  
University of Pittsburgh  
University of Rochester  
University of Southern California  
University of Tennessee at Knoxville  
University of Texas at Austin  
University of Utah  
University of Virginia  
University of Washington  
University of Wisconsin at Madison  
Virginia Polytechnic Institute and State University  
Vanderbilt University  
Washington University  
Yale University  
Yeshiva University (did not participate in Packard Study)

## APPENDIX C

Consortium for Educational Technology in University Systems, (CETUS)

### Guidelines for Intellectual Property

.... The Consortium for Educational Technology in University Systems, (CETUS)

[www.cetus.org/index.html](http://www.cetus.org/index.html) 13 offers the following guidelines for intellectual property:

“The management and administration of matters related to university contracts, policies, and guidelines which bear on the creation, ownership, storage, and use of intellectual properties should:

- Foster the creation of the best possible quality new intellectual properties so as to further the academic mission of higher education.
- Foster the dissemination of new knowledge and the maintenance of high academic standards.
- Provide incentive for university faculty, staff, and students to fully participate in the use and creation of intellectual properties.
- Recognize that newly created intellectual properties in a university setting come in a wide variety of old and new types and arise in a wide variety of specific contexts. Nonetheless, strong mutual interests are shared among the university, the faculty, the staff, and the students in the appropriate allocation of the ownership rights associated with such intellectual properties.

### Appendix C (continued)

- Support the concept that the ownership of intellectual property rights is not necessarily an “all-or-nothing” proposition. Rather, the set of rights that belongs to the owners of intellectual properties may be allocated so as to optimally support the mutual interests of the university, faculty, staff, and students.
- Foster within the university community the continued collective and individual ability to access, acquire, and store information and works, to help scholars and students in the proper use and citation of the works of others, and to maintain coordination and contact with the world of publishers and other information providers.
- Appropriately adapt university contracts, policies, and guidelines so as to address the challenges and opportunities presented as technologies and cultures continue to evolve and affect the practices of higher education.”
- CETUS recommends the following:
  - “1. Adopting written policy statements that establish a framework for addressing the ownership of diverse materials commonly created on campus, including course materials, scholarly articles, multimedia projects, and distance-learning videotapes.
  2. Adopting a set of general principles for determining ownership based on the three factors described in this booklet: creation, control, and compensation.

Appendix C (continued)

3. Establishing a framework for allocating or “unbundling” rights associated with new works in order to make them most appropriately available for teaching, learning, and research.
4. Providing standard agreement forms for the university to enter into with faculty members and others in order to clarify ownership of copyrights and the allocation of rights associated with specific projects.
5. Specifying in written agreements the persons who will own and manage certain rights associated with a project and the allocation of rights to others, particularly rights of copying for teaching and study by colleagues and students at the author’s home university.
6. Encouraging authors to retain rights to future uses of their works when entering into publishing agreements; in particular, authors should avoid giving all rights to publishers and should retain rights of future use for teaching and research by the author and by others at the author’s home university and perhaps elsewhere.
7. Providing for easier and clearer rights to use works held by the university and its faculty for the advancement of learning throughout the domain of American higher education.”

Consortium for Educational Technology for University Systems (CETUS) “Ownership of New Works at the University: Unbundling of Rights and the Pursuit of Higher Learning.”

1997. <http://www.cetus.org/ownership.pdf>

## APPENDIX D

### 1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments

In 1940, following a series of joint conferences begun in 1934, representatives of the American Association of University Professors and of the Association of American Colleges (now the Association of American Colleges and Universities) agreed upon a restatement of principles set forth in the 1925 Conference Statement on Academic Freedom and Tenure. This restatement is known to the profession as the 1940 Statement of Principles on Academic Freedom and Tenure.

The 1940 Statement is printed below, followed by Interpretive Comments as developed by representatives of the American Association of University Professors and the Association of American Colleges in 1969. The governing bodies of the two associations, meeting respectively in November 1989 and January 1990, adopted several changes in language in order to remove gender-specific references from the original text.

The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to ensure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher<sup>1</sup> or the institution as a whole.

The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth.

## APPENDIX D (continued)

Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights. [1]2

Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.

### ACADEMIC FREEDOM

- a. Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
- b. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.[2] Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.[3]
- c. College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens,

#### APPENDIX D (continued)

- d. they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations.
- e. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.[4]

#### 1940 INTERPRETATIONS

At the conference of representatives of the American Association of University Professors and of the Association of American Colleges on November 7–8, 1940, the following interpretations of the 1940 Statement of Principles on Academic Freedom and Tenure were agreed upon:

1. That its operation should not be retroactive.
2. That all tenure claims of teachers appointed prior to the endorsement should be determined in accordance with the principles set forth in the 1925 Conference Statement on Academic Freedom and Tenure.
3. If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph (c) of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph 4 of the section on Academic Tenure.

#### APPENDIX D (continued)

In pressing such charges the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

#### 1970 INTERPRETIVE COMMENTS

Following extensive discussions on the 1940 Statement of Principles on Academic Freedom and Tenure with leading educational associations and with individual faculty members and administrators, a joint committee of the AAUP and the Association of American Colleges met during 1969 to reevaluate this key policy statement. On the basis of the comments received, and the discussions that ensued, the joint committee felt the preferable approach was to formulate interpretations of the Statement in terms of the experience gained in implementing and applying the Statement for over thirty years and of adapting it to current needs.

The committee submitted to the two associations for their consideration the following “Interpretive Comments.” These interpretations were adopted by the Council of the American Association of University Professors in April 1970 and endorsed by the Fifty-sixth Annual Meeting as Association policy.

## APPENDIX D (continued)

In the thirty years since their promulgation, the principles of the 1940 Statement of Principles on Academic Freedom and Tenure have undergone a substantial amount of , refinement. This has evolved through a variety of processes, including customary acceptance, understandings mutually arrived at between institutions and professors or their representatives, investigations and reports by the American Association of University Professors, and formulations of statements by that association either alone or in conjunction with the Association of American Colleges. These comments represent the attempt of the two associations, as the original sponsors of the 1940 Statement, to formulate the most important of these refinements. Their incorporation here as Interpretive Comments is based upon the premise that the 1940 Statement is not a static code but a fundamental document designed to set a framework of norms to guide adaptations to changing times and circumstances.

Also, there have been relevant developments in the law itself reflecting a growing insistence by the courts on due process within the academic community which parallels the essential concepts of the 1940 Statement; particularly relevant is the identification by the Supreme Court of academic freedom as a right protected by the First Amendment. As the Supreme Court said in *Keyishian v. Board of Regents*, 385 U.S. 589 (1967), “Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned.

## APPENDIX D (continued)

That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.”

The numbers refer to the designated portion of the 1940 Statement on which interpretive comment is made.

1. The Association of American Colleges and the American Association of University Professors have long recognized that membership in the academic profession carries with it special responsibilities. Both associations either separately or jointly have consistently affirmed these responsibilities in major policy statements, providing guidance to professors in their utterances as citizens, in the exercise of their responsibilities to the institution and to students, and in their conduct when resigning from their institution or when undertaking government-sponsored research. Of particular relevance is the Statement on Professional Ethics, adopted in 1966 as Association policy. (A revision, adopted in 1987, may be found in AAUP, *Policy Documents and Reports*, 9th ed. [Washington, D.C., 2001], 133–34.)

2. The intent of this statement is not to discourage what is “controversial.” Controversy is at the heart of the free academic inquiry, which the entire statement is designed to foster. The passage serves to underscore the need for teachers to avoid persistently intruding material, which has no relation to their subject.

3. Most church-related institutions no longer need or desire the departure from the principle of academic freedom implied in the 1940 Statement, and we do not now endorse such a departure.

APPENDIX D (continued)

4. This paragraph is the subject of an interpretation adopted by the sponsors of the 1940 Statement immediately following its endorsement, which reads as follows:

If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph (c) of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph 4 of the section on Academic Tenure. In pressing such charges, the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

Paragraph (c) of the section on Academic Freedom in the 1940 Statement should also be interpreted in keeping with the 1964 "Committee A Statement on Extramural Utterances" (Policy Documents and Reports, 32), which states inter alia: "The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his or her position. Extramural utterances rarely bear upon the faculty member's fitness for the position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar."

Paragraph 5 of the Statement on Professional Ethics also deals with the nature of the "special obligations" of the teacher. The paragraph reads as follows:

## APPENDIX D (continued)

As members of their community, professors have the rights and obligations of other citizens. Professors measure the urgency of other obligations in the light of their responsibilities to their subject, to their students, to their profession, and to their institution. When they speak or act as private persons they avoid creating the impression of speaking or acting for their college or university. As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

Both the protection of academic freedom and the requirements of academic responsibility apply not only to the full-time probationary and the tenured teacher, but also to all others, such as part-time faculty and teaching assistants, who exercise teaching responsibilities.

5. The concept of “rank of full-time instructor or a higher rank” is intended to include any person who teaches a full-time load regardless of the teacher’s specific title

6. In calling for an agreement “in writing” on the amount of credit given for a faculty member’s prior service at other institutions, the Statement furthers the general policy of full understanding by the professor of the terms and conditions of the appointment. It does not necessarily follow that a professor’s tenure rights have been violated because of the absence of a written agreement on this matter. Nonetheless, especially because of the variation in permissible institutional practices, a written understanding concerning these matters at the time of appointment is particularly appropriate and advantageous to both the individual and the institution

APPENDIX D (continued)

7. The effect of this subparagraph is that a decision on tenure, favorable or unfavorable, must be made at least twelve months prior to the completion of the probationary period. If the decision is negative, the appointment for the following year becomes a terminal one. If the decision is affirmative, the provisions in the 1940 Statement with respect to the termination of service of teachers or investigators after the expiration of a probationary period should apply from the date when the favorable decision is made. The general principle of notice contained in this paragraph is developed with greater specificity in the Standards for Notice of Nonreappointment, endorsed by the Fiftieth Annual Meeting of the American Association of University Professors (1964). These standards are:

Notice of nonreappointment, or of intention not to recommend reappointment to the governing board, should be given in writing in accordance with the following standards:

- (a) Not later than March 1 of the first academic year of service, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination.
- (b) Not later than December 15 of the second academic year of service, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.
- (c) At least twelve months before the expiration of an appointment after two or more years in the institution.

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## APPENDIX D (continued)

Other obligations, both of institutions and of individuals, are described in the Statement on Recruitment and Resignation of Faculty Members, as endorsed by the Association of American Colleges and the American Association of University Professors in 1961.

8. The freedom of probationary teachers is enhanced by the establishment of a regular procedure for the periodic evaluation and assessment of the teacher's academic performance during probationary status. Provision should be made for regularized procedures for the consideration of complaints by probationary teachers that their academic freedom has been violated. One suggested procedure to serve these purposes is contained in the Recommended Institutional Regulations on Academic Freedom and Tenure, prepared by the American Association of University Professors.

9. A further specification of the academic due process to which the teacher is entitled under this paragraph is contained in the Statement on Procedural Standards in Faculty Dismissal Proceedings, jointly approved by the American Association of University Professors and the Association of American Colleges in 1958. This interpretive document deals with the issue of suspension, about which the 1940 Statement is silent.

The 1958 Statement provides: "Suspension of the faculty member during the proceedings is justified only if immediate harm to the faculty member or others is threatened by the faculty member's continuance. Unless legal considerations forbid, any such suspension should be with pay." A suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process.

## APPENDIX D (continued)

The concept of “moral turpitude” identifies the exceptional case in which the professor may be denied a year’s teaching or pay in whole or in part. The statement applies to that kind of behavior which goes beyond simply warranting discharge and is so utterly blameworthy as to make it inappropriate to require the offering of a year’s teaching or pay. The standard is not that the moral sensibilities of persons in the particular community have been affronted. The standard is behavior that would evoke condemnation by the academic community generally.

### Endnotes

1. The word “teacher” as used in this document is understood to include the investigator who is attached to an academic institution without teaching duties
2. Boldface numbers in brackets refer to Interpretive Comments which follow.
  - For a discussion of this question, see the “Report of the Special Committee on Academic Personnel Ineligible for Tenure,” Policy Documents and Reports, 88–91.
  - For a more detailed statement on this question, see “On Crediting Prior Service Elsewhere as Part of the Probationary Period,” *ibid.*, 100–101.

### ENDORSEES

Association of American Colleges and Universities 1941  
American Association of University Professors 1941  
American Library Association (adapted for librarians) 1946  
Association of American Law Schools 1946  
American Political Science Association 1947  
American Association of Colleges for Teacher Education 1950

APPENDIX D (continued)

American Association for Higher Education 1950  
Eastern Psychological Association 1950  
Southern Society for Philosophy and Psychology 1953  
American Psychological Association 1961  
American Historical Association 1961  
Modern Language Association of America 1962  
American Economic Association 1962  
American Agricultural Economics Association 1962  
Midwest Sociological Society 1963  
Organization of American Historians 1963  
American Philological Association 1963  
American Council of Learned Societies 1963  
Speech Communication Association 1963  
American Sociological Association 1963  
Southern Historical Association 1963  
American Studies Association 1963  
Association of American Geographers 1963  
Southern Economic Association 1963  
Classical Association of the Middle West and South 1964  
Southwestern Social Science Association 1964  
Archaeological Institute of America 1964

APPENDIX D (continued)

Southern Management Association 1964  
American Theatre Association 1964  
South Central Modern Language Association 1964  
Southwestern Philosophical Society 1964  
Council of Independent Colleges 1965  
Mathematical Association of America 1965  
Arizona-Nevada Academy of Science 1965  
American Risk and Insurance Association 1965  
Academy of Management 1965  
American Catholic Historical Association 1966  
American Catholic Philosophical Association 1966  
Association for Education in Journalism 1966  
Western History Association 1966  
Mountain-Plains Philosophical Conference 1966  
Society of American Archivists 1966  
Southeastern Psychological Association 1966  
Southern Speech Communication Association 1966  
American Association for the Advancement of Slavic Studies 1967  
American Mathematical Society 1967  
College Theology Society 1967  
Council on Social Work Education 1967

APPENDIX D (continued)

American Association of Colleges of Pharmacy 1967

American Academy of Religion 1967

Association for the Sociology of Religion 1967

American Society of Journalism School Administrators 1967

John Dewey Society 1967

South Atlantic Modern Language Association 1967

American Finance Association 1967

Association for Social Economics 1967

United Chapters of Phi Beta Kappa 1968

American Society of Christian Ethics 1968

American Association of Teachers of French 1968

Eastern Finance Association 1968

American Association for Chinese Studies 1968

American Society of Plant Physiologists 1968

University Film and Video Association 1968

American Dialect Society 1968

American Speech-Language-Hearing Association 1968

Association of Social and Behavioral Scientists 1968

College English Association 1968

National College Physical Education Association for Men 1969

American Real Estate and Urban Economics Association 1969

History of Education Society 1969

APPENDIX D (continued)

Council for Philosophical Studies 1969

American Musicological Society 1969

American Association of Teachers of Spanish and Portuguese 1969

Texas Junior College Teachers Association 1970

College Art Association of America 1970

Society of Professors of Education 1970

American Anthropological Association 1970

Association of Theological Schools 1970

Association of Schools and Mass Communication of Journalism 1971

American Business Law Association 1971

American Council for the Arts 1972

New York State Mathematics Association of Two-Year Colleges 1972

College Language Association 1973

Pennsylvania Historical Association 1973

Massachusetts Regional Community College Faculty Association 1973

American Philosophical Association••• 1974

••• Endorsed by the Association's Western Division in 1952, Eastern Division in 1953,  
and Pacific Division in 1962.

American Classical League 1974

American Comparative Literature Association 1974

Rocky Mountain Modern Language Association 1974

Society of Architectural Historians 1975

APPENDIX D (continued)

American Statistical Association 1975

American Folklore Society 1975

Association for Asian Studies 1975

Linguistic Society of America 1975

African Studies Association 1975

American Institute of Biological Sciences 1975

North American Conference on British Studies 1975

Sixteenth-Century Studies Conference 1975

Texas Association of College Teachers 1976

Society for Spanish and Portuguese Historical Studies 1976

Association for Jewish Studies 1976

Western Speech Communication Association 1976

Texas Association of Colleges for Teacher Education 1977

Metaphysical Society of America 1977

American Chemical Society 1977

Texas Library Association 1977

American Society for Legal History 1977

Iowa Higher Education Association 1977

American Physical Therapy Association 1979

North Central Sociological Association 1980

Dante Society of America 1980

Association for Communication Administration 1981

APPENDIX D (continued)

American Association of Physics Teachers	1982
Middle East Studies Association	1982
National Education Association	1985
American Institute of Chemists	1985
American Association of Teachers of German	1985
American Association of Teachers of Italian	1985
American Association for Applied Linguistics	1986
American Association of Teachers of Slavic and East European Languages	1986
American Association for Cancer Education	1986
American Society of Church History	1986
Oral History Association	1987
Society for French Historical Studies	1987
History of Science Society	1987
American Association of Pharmaceutical Scientists	1988
American Association for Clinical Chemistry	1988
Council for Chemical Research	1988
Association for the Study of Higher Education	1988
American Psychological Society	1989
University and College Labor Education Association	1989
Society for Neuroscience	1989
Renaissance Society of America	1989

APPENDIX D (continued)

Society of Biblical Literature 1989

National Science Teachers Association 1989

Medieval Academy of America 1990

American Society of Agronomy 1990

Crop Science Society of America 1990

Soil Science Society of America 1990

Society of Protozoologists 1990

Society for Ethnomusicology 1990

American Association of Physicists in Medicine 1990

Animal Behavior Society 1990

Illinois Community College Faculty Association 1990

American Society for Theatre Research 1990

National Council of Teachers of English 1991

Latin American Studies Association 1992

Society for Cinema Studies 1992

American Society for Eighteenth-Century Studies 1992

Council of Colleges of Arts and Sciences 1992

American Society for Aesthetics 1992

Association for the Advancement of Baltic Studies 1994

American Council of Teachers of Russian 1994

Council of Teachers of Southeast Asian Languages 1994

American Association of Teachers of Arabic 1994

APPENDIX D (continued)

Association of Teachers of Japanese 1994

Academic Senate for California Community Colleges 1996

Council of Academic Programs in Communication Sciences and Disorders 1996

Association for Women in Mathematics 1997

Philosophy of Time Society 1998

World Communication Association 1999

The Historical Society 1999

Association for Theatre in Higher Education 1999

National Association for Ethnic Studies 1999

Association of Ancient Historians 1999

American Culture Association 1999

American Conference for Irish Studies 1999

Society for Philosophy in the Contemporary World 1999

Eastern Communication Association 1999

Association for Canadian Studies in the United States 1999

American Association for the History of Medicine 2000

Missouri Association of Faculty Senates 2000

New England Historical Association 2001

(Updated 6/02)

American Association of University Professors, 1012 Fourteenth Street, NW, Suite #500;

Washington, DC 20005 202-737-5900 Fax: 202-737-5526

## APPENDIX E

### **American Association of University Professors Statement on Copyright**

The objective of copyright is, in the words of the U.S. Constitution, to “promote the progress of science and useful arts.” To achieve that objective, authors are given exclusive rights under the Copyright Act to reproduce their works, to use them as the basis for derivative works, to disseminate them to the public, and to perform and display them publicly. 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. This mission is reflected in the 1940 Statement of Principles on Academic Freedom and Tenure:

Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition.

### **Academic Practice**

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. Examples include class notes and syllabi, books and articles, works of fiction and nonfiction, poems and dramatic works, musical and choreographic works, pictorial, graphic, and sculptural works, and educational software, commonly known as “courseware.” This practice has been followed for the most part, regardless of the physical medium in which these “traditional academic works” appear, that is, whether on paper or in audiovisual or electronic form.

## APPENDIX E (continued)

As will be developed below, this practice should therefore ordinarily apply to the development of courseware for use in programs of distance education.

### **Unilateral Institutional Policies**

Some colleges and universities have promulgated policies, typically unenforced, that proclaim traditional academic works to be the property of the institution. Faculty handbooks, for example, sometimes declare that faculty members shall be regarded as having assigned their copyrights to the institution. The Copyright Act, however, explicitly requires that a transfer of copyright, or of any exclusive right (such as the exclusive right to publish), must be evidenced in writing and signed by the author-transferor. If the faculty member is indeed the initial owner of copyright, then a unilateral institutional declaration cannot effect a transfer, nor is it likely that a valid transfer can be effected by the issuance of appointment letters to new faculty members requiring, as a condition of employment, that they sign a faculty handbook which purports to vest in the institution the ownership of all works created by the faculty member for an indefinite future.

Other colleges and universities instead proclaim that traditional academic works are ““work-for-hire”,” with the consequence that the institution is regarded as the initial owner of copyright. This institutional claim is often stated to rest upon the use by the faculty member, in creating such works, of college or university resources such as office space and supplies, library facilities, ordinary access to computers and networks, and salary.

## APPENDIX E (continued)

The pertinent definition of “work-for-hire” is a work prepared by an “employee within the scope of his or her employment.” In the typical work-for-hire situation, the content and purpose of the employee-prepared works are under the control and direction of the employer; the employee is accountable to the employer for the content and design of the work. In the case of traditional academic works, however, 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. Were the institution to own the copyright in such works, under a theory, it would have the powers, for example, to decide where the work is to be published, to edit and otherwise revise it, to prepare derivative works based thereon (such as translations, abridgments, and literary, musical, or artistic variations), and indeed to censor and forbid dissemination of the work altogether. Such powers, so deeply inconsistent with fundamental principles of academic freedom, cannot rest with the institution.

### **College or University Copyright Ownership**

Situations do arise, however, in which the college or university may fairly claim ownership of, or an interest in, copyright in works created by faculty (or staff) members. Three general kinds of projects fall into this category: special works created in circumstances that may properly be regarded as “made for hire,” negotiated contractual transfers, and “joint works” as described in the Copyright Act.

## APPENDIX E (continued)

“”. Although traditional academic work that is copyrightable-- such as lecture notes and courseware, books, and articles--cannot normally be treated as “”, some works created by college or university faculty and staff members do properly fall within that category, allowing the institution to claim copyright ownership. Works created as a specific requirement of employment or as an assigned institutional duty that may, for example, be included in a written job description or an employment agreement, may be fairly deemed “”. Even absent such prior written specification, ownership will vest with the college or university in those cases in which it provides the specific authorization or supervision for the preparation of the work. Examples are reports prepared by a dean or by the chair or members of a faculty committee, or college promotional brochures prepared by a director of admissions. Some institutions appear to treat course examinations as falling within this category, but the stronger case can be made for treating examinations as part of the faculty member's customary instructional materials, with copyright thus owned by the individual.

The Copyright Act also defines as a “” certain works that are commissioned from one who is not an employee but an “independent contractor.” The institution will own the copyright in such a commissioned work when the author is not a college or university employee, or when the author is such an employee but the work to be created falls outside the normal scope of that person's employment duties (such as a professor of art history commissioned by the institution under special contract to write a catalog for a campus art gallery).

## APPENDIX E (continued)

In such situations, for the doctrine to apply there must be a written agreement so stating and signed by both parties; the work must also fall within a limited number of statutory categories, which include instructional texts, examinations, and contributions to a collective work.

Contractual transfers. In situations in which the copyright ownership is held by the faculty (or staff) member, it is possible for the individual to transfer the entire copyright, or a more limited license, to the institution or to a third party. As already noted, under the Copyright Act, a transfer of all of the copyright or of an exclusive right must be reflected in a signed document in order to be valid. When, for example, a work is prepared pursuant to a program of “sponsored research” accompanied by a grant from a third party, a contract signed by the faculty member providing that copyright will be owned by the institution will be enforceable. Similarly, the college or university may reasonably request that the faculty member--when entering into an agreement granting the copyright or publishing rights to a third party--make efforts to reserve to the institution the right to use the work in its internally administered programs of teaching, research, and public service on a perpetual, royalty-free, nonexclusive basis.

Joint Works. Under certain circumstances, two or more persons may share copyright ownership of a work, notably when it is a “joint work.” The most familiar example of a joint work is a book or article written, fully collaboratively, by two academic colleagues. Each is said to be a “co-owner” of the copyright, with each having all the usual rights of the copyright owner (i. e., to license others to publish, to distribute to the public, to translate, and the like) provided that any income from such uses is shared with the other.

## APPENDIX E (continued)

In rare situations, an example of which is discussed immediately below, it may be proper to treat a work as a product of the joint authorship of the faculty member and his or her institution, so that both have a shared interest in the copyright.

### **New Instructional Technologies**

The development of new instructional technologies has led to some uncertainties with regard to the respective rights of the institution and its faculty members. For example, courseware prepared for programs of distance education will typically incorporate instructional content authored, and presented, by faculty members; but the college or university may contribute specialized services and facilities to the production of the courseware that go beyond what is traditionally provided to faculty members generally in the preparation of their course materials. On the one hand, the institution may simply supply “delivery mechanisms,” such as videotaping, editing, and marketing services; in such a situation, it is very unlikely that the institution will be regarded as having contributed the kind of “authorship” that is necessary for a “joint work” that automatically entitles it to a share in the copyright ownership. On the other hand, the institution may, through its administrators and staff, effectively determine or contribute to such detailed matters as substantive coverage, creative graphic elements, and the like; in such a situation, the institution has a stronger claim to co-ownership rights.

## APPENDIX E (continued)

### **Ownership, Control, Use, and Compensation: The Need for Informed Allocation of Rights**

Given the varying roles possibly played by the institution and the faculty member, and the nascent state of distance-education programs and technologies, it is not likely that a single principle of law can clearly allocate copyright ownership interests in all cases. In some instances, the legal rules may warrant the conclusion that the college or university is a “joint author”; in other instances, that it should be compensated with royalties commensurate with its investment; and in yet others, that it has some sort of implied royalty-free “license to use” the copyrighted work. It is therefore useful for the respective rights of individual faculty members and the institution-concerning ownership, control, use, and compensation to be negotiated in advance, and reduced to a written agreement. Although the need for contractual arrangements has become more pressing with the advent of new instructional technologies, such arrangements should be considered even with respect to the more traditional forms of authorship when the institution seeks to depart from the norm of faculty copyright ownership. An alternative format, perhaps somewhat less desirable-because less likely to be fully known to and appreciated by individual faculty members-would be detailed and explicit institutional regulations dealing with a variety of pertinent issues, subject to the strictures noted above concerning copyright transfers. Such regulations should of course give great weight to the views of the faculty, and may be reflected either in widely available institutional policy documents or in collective bargaining agreements.

APPENDIX E (continued)

Whoever owns the copyright, the institution may reasonably require reimbursement for any unusual financial or technical support. That reimbursement might take the form of future royalties or a nonexclusive, royalty-free license to use the work for internal educational and administrative purposes. Conversely, where the institution holds all or part of the copyright, the faculty member should, at a minimum, retain the right to take credit for creative contributions, to reproduce the work for his or her instructional purposes, and to incorporate the work in future scholarly works authored by that faculty member. In the context of distance-education courseware, the faculty member should also be given rights in connection with its future uses, not only through compensation but also through the right of “first refusal” in making new versions or at least the right to be consulted in good faith on reuse and revisions.

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American Association of University Professors, 1012 Fourteenth Street, NW, Suite #500;  
Washington, DC 20005  
202-737-5900 Fax: 202-737-5526

## APPENDIX F

The following is the Draft Recommendations Stevens Institute of Technology Web-Based Course Intellectual Property Rights in its entirety

### 1. Preamble

It is proposed that contracts, policies, and guidelines which bear on creation, ownership, storage, and use of intellectual properties of Web-based courses:

- a. Foster the creation of the best possible Web-based courses;
- b. Foster dissemination of new knowledge in maintaining high academic standards;
- c. Provide incentives for various constituencies of the Institute to participate fully in the use and creation of Web-based courses;
- d. Recognize that the creation and dissemination of Web-based courses come in a wide variety of contexts;
- e. Support the concept that ownership of the intellectual property rights in Web-based courses is not necessarily an "all-or-nothing" proposition; rather, rights that belong to owners of intellectual properties may be allocated to support mutual interests of the Institute and its various constituencies;
- f. Foster within the Institute community collective and individual ability to access, acquire, and store information and works, to help scholars and students in the proper use and citation of works of others, and to maintain coordination and contact with publishers, software vendors, and other information providers;
- g. Adapt contracts, policies, and guidelines appropriately to address challenges and opportunities presented as technologies and cultures continue to evolve; and
- h. Operate under a "policy framework" in which negotiations proceed in good faith under a limited number of "model" agreements.

## APPENDIX F (continued)

### 2. Definitions and Distinctions

To implement effective and fair intellectual property rights policy for Web-based courses, these distinctions and definitions are proposed:

a. “Customary” and “Extraordinary.”

(i) “Customary” conditions apply, but are not necessarily limited to, situations in which faculty is provided with normal support, such as standard office and laboratory space, library facilities, ordinary access to computers and networks, or salary. Page 2. Web-based Course Intellectual Property Rights Draft Recommendations

(ii) “Extraordinary” conditions apply, but are not necessarily limited to, situations in which substantial use of specialized or unique staff, facilities and equipment or other special subventions or compensation is provided by the Institute to the faculty to create online courses. Under “Extraordinary” conditions, faculty enter into contracts with the Institute.

b. “Intellectual Content” and “Commercialization.”

(i) “Intellectual Content” refers to material contained within a course; namely, syllabi, lecture notes, bibliographies, readings, examinations, and other elements created by faculty.

(ii) “Commercialization” covers activities such as marketing, distribution, dissemination, licensing, and institutional management, among other services provided by the Institute or other entities.

c. “Supplementary” and “Entirely Online.”

(i) “Supplementary” refers to Web-based course modules created by faculty to supplement conventional classroom teaching.

## APPENDIX F (continued)

(ii) “Entirely Online” are courses delivered to distance-learning students entirely over the Web.

d. “Development” and “Teaching.” With respect to Entirely Online Web-based courses, faculty engage in two distinct activities:

(i) “Development” refers to creation of online syllabi, lecture notes, bibliographies, readings, examinations, and other elements in advance of instruction. The individual (or individuals jointly) engaged in these activities is called “Developer.”

(ii) “Teaching” refers to the activity in which faculty instructs distance-learning students Entirely Online. The individual (or individuals jointly) engaged in this activity is called the “Teacher” or “Instructor.” Some “Development” activities may continue during delivery of an Entirely Online Web-based course.

(iii) It is recommended that faculty be compensated separately for Development and Teaching.

e. “Copyright Ownership” and “Transfer of Copyright.”

(i) Under Extraordinary conditions, it is proposed that when Developer creates an Entirely Online course, Developer assumes “Copyright Ownership” and it is further suggested that Developer “Transfers Copyright” to the Institute for Commercialization.

(ii) It is also proposed that when faculty create Web-based Supplementary modules for conventional classroom teaching, Copyright rest with the faculty member, without Transferring Copyright.

### 3. Concepts

a. Faculty Oversight.

## APPENDIX F (continued)

In order to assure high quality Web-based courses, standard faculty processes are to be applied to review and approve new (or sufficiently different) Entirely Online Web-based courses.

b. Portability. Model Agreements may contain these elements:

(i) Faculty members are free to use their Supplementary Web-based course materials at other institutions without the Institute's approval.

(ii) Entirely Online Web-based courses Developed at Stevens, created under Extraordinary conditions, may not be offered at other institutions without the Institute's prior approval.

(iii) Negotiated licensing fees may apply to the other institutions when a former faculty member teaches Entirely Online Web-based courses Developed at Stevens under Extraordinary conditions.

c. “Unbundling” Intellectual Property Rights.

(i) Developer's Right of First Refusal. In the event the Institute wishes to offer a course Developed by a Full-time faculty member under Extraordinary conditions, it is recommended that Developer be given the “right of first refusal” to teach the course. In the event Developer fails to teach the course in a mutually agreed schedule, the Institute may offer the course to another Teacher. The Institute may wish not to offer this right to Part-time faculty course Developers.

#### APPENDIX F (continued)

(ii) The Institute's and Developer's Licensing Rights. It is recommended that when the Institute licenses Entirely Online Web-based courses to third parties-such as other educational institutions, publishers, distributors, information providers, scholarly societies, corporations, and other commercial and nonprofit entities-Developer and the Institute may share the proceeds. It is also recommended that when the Institute and Developer agree to have an Entirely Online course taught by another Teacher, Developer may receive a percentage of receipts after the new Teacher's compensation has been recovered by the Institute.

(iii) Developer's Scholarly Rights. It is recommended that Developers be given the right, without requesting permission from the Institute, to use Intellectual Content from their Entirely Online Web-based courses-even those created under Extraordinary conditions-in scholarly contributions to books, articles, conventional courses, seminars, lectures, and similar scholarly activities in print and in person. It is also proposed that without seeking permission from the Institute, the same right be given to faculty to use Intellectual Content from Web-based material prepared as Supplementary to conventional Web-based courses.

(iv) The Institute's Commercial Rights. It is recommended that the Institute be given the right to Commercialize and License Entirely Online Web-based courses created under extraordinary conditions. In the event the Institute fails to Commercialize or License such courses in a mutually agreed schedule, such rights may revert to Developer. It is also proposed that the Institute provide Developer with periodic reports covering the extent of their courses that have been Commercialized and Licensed, as well as compensation that may be due Developer from such Commercialization and Licensing.

## APPENDIX F (continued)

In the event compensation is due Developer, it is recommended that the Institute pay Developer earned compensation in a timely fashion.

(i) The Institute's Digital and Other Electronic Rights. It is recommended that rights to derivative digital and electronic works-such as television, film, video, CD-ROM, DVD, computer disc, audio, and other recordings derived from Entirely Online Web-based courses, created under Extraordinary conditions-rest with the Institute. It is also proposed that, in the event the Institute fails to exploit such rights in a mutually agreed schedule, such rights revert to Developer. Developer may seek permission from the Institute to use these rights in connection with his or her own scholarly activities; in which case, it is recommended that the Institute not unreasonably withhold them. It is also recommended that the Institute provide Developer with periodic reports of the extent of courses his or her Commercialized and Licensed as well as pay any compensation that may be due Developer from Commercialization and Licensing in a timely fashion.

(ii) Rights Accorded Full-time and Part-time Faculty. It is proposed that the Institute provide full intellectual property rights to Full-time faculty. Limited intellectual property rights may be accorded Part-time faculty.

### 4. Model Agreements

## APPENDIX F (continued)

Should these Policy Recommendations be approved, it is proposed that Model Agreements be created to establish contractual relations between the faculty and the Institute bearing on Development, Teaching, and dissemination of Entirely Online Web-based courses. No new contractual arrangements need be introduced for Supplementary Web-based courses, inasmuch as traditional academic practice already covers such situations.

It is recommended that Model Agreements incorporate distinctions and definitions proposed; that faculty be compensated separately for Developing and Teaching; that the Institute may elect to provide Full-time faculty greater rights in courses than it does to Part-time faculty; and that Developers assume Copyright and Transfer those rights to the Institute for Commercialization. It is also recommended that the portability section recommended be introduced in all Model Agreements.

The Options outlined are merely suggestions for a variety of contractual terms that may be negotiated. Other permutations may be introduced. Also note that items outlined under each Option are not fixed. Terms from one Option may be introduced into other Model Agreements.

### Option A

1. Licensing: Institute and Developer share proceeds equally, less administrative charges.
2. Institute's Own Use: Developer receives 10% of proceeds from course taught by other faculty, less other Teacher's compensation and administrative charges.
3. Reversion of Rights for Failure of Institute to Commercialize: 3 years.
4. Duration of Agreement: 5 years.

## APPENDIX F (continued)

### Option B

1. Licensing: Institute receives 60%; Developer 40% of proceeds, less administrative charges. 2. Institute's Own Use: Developer receives 5% of proceeds from course taught by other faculty, less other Teacher's compensation and administrative charges. 3. Reversion of Rights for Failure of Institute to Commercialize: 4 years. 4. Duration of Agreement: 6 years.

### Option C

1. Licensing: Institute receives 40%; Developer 60% of proceeds, less administrative charges. 1 Institute's Own Use: Developer receives 15% of proceeds from course taught by other faculty, less other Teacher's compensation and administrative charges. 2 Reversion of Rights for Failure of Institute to Commercialize: 2 years. 3 Duration of Agreement: 3 years.

Source: Prepared by Robert Ubell, October 15, 1999, on behalf of the Ad Hoc Intellectual Property Rights Committee.