

Remote Teaching and Its Impact on Intellectual Property

Presenters:

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Lawyer Caveats

- Cannot and are not providing legal advice
- Copyright can be complicated and not addressing in general here, we are going to discuss how the current situation affects copyright
- Also, we will discuss how things generally or usually work, though they might be different at your institution, so you need to look at your own institution's policies

Core Themes

- Uphold core principles. Here, importance of shared governance and faculty control over academic work
- Important to carefully review material from administration for changes in policy or application
- Important for faculty at institution to work together to address any changes
- For the current situation, one good method is to consider this “Traditional teaching done remotely”

Public Fair Use Statement

- [Public Statement of Library Copyright Specialists: Fair Use & Emergency Remote Teaching & Research](#)

“The **benefit to the public** in providing remote coursework is **obvious** when it enables teaching to continue in the face of social distancing measures or quarantine, or when access to physical library materials is impossible.”

“While fair use is absolutely appropriate to support the heightened demands presented by this emergency, if time periods extend further, **campuses will need to investigate and adopt solutions tailored for the long-term.**”

Fair Use Factors

1. Purpose & Character - Enabling teaching & research continuity in public health emergency.
2. Nature of the Copyrighted Work - Rarely plays a significant role, same as usual.
3. Amount & Substantiality - Is the amount used reasonable in light of the purpose?
4. Market Effect - Consider in light of the purpose.

“As long as we are being thoughtful in our analysis and limiting our activities to the specific needs of our patrons during this time of crisis, copyright law supports our uses. **The fair use doctrine accommodates the flexibility required by our shared public health crisis**, enabling society to function and progress while protecting human life and safety.”

TEACH Act

- Copyright exemptions are different: instead of face-to-face teaching exemption (17 USC 110(1)) applying, TEACH Act (17 USC 110(2)) applies in digital environment
- Must meet [these \(lengthy\) requirements](#) and be a TEACH compliant institution (17 USC 110(2)(D))
 - performance of a nondramatic literary or musical work
 - reasonable and limited portions of any other work
 - display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session
- Audio & Video clips must comply with DMCA: Short Portions
- Can watch DVD on Zoom

Teaching Tools Terms of Use

- Do online platforms own the copyrights in materials we upload?
- Typical terms:
 - You are responsible for content & consequences [LMS is not] & ownership remains yours
 - worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, host, store, copy, reproduce, process, adapt, modify, publish, transmit, create derivative works from, communicate, display, and/or distribute such Content in any and all media or distribution methods

Faculty Copyright Ownership

- Copyright Act of 1976
- Copyright ownership and licensing of works created by professors generally governed by:
 - University Policies, Handbooks, and Collective Bargaining Agreements
 - Hire letters, individual assignments of work
- AAUP Policies
 - [Statement on Copyright](#), 1999
 - [Statement on Online and Distance Education](#). 1999.
 - [Statement on Intellectual Property](#). 2013.

University Copyright Policies

“General” Status – Traditional Teaching

- Majority faculty owns copyright to traditional scholarly works
- Can be different policies, particularly for non-tenure track or adjuncts
- Can be exceptions for “substantial use of university resources”

“General” Status – “Online Teaching” and “Distance Education”

- Online teaching is generally distinct
- Online teaching - often have specific policies or agreements addressing, including copyright
- Copyright - there is NO usual status. Very institution dependent

Approach in COVID Times

- Negotiate or get clarity where possible
- Generally, for the current emergency, doing traditional teaching, but teaching “remotely” will best protect traditional copyright ownership
- NOT moving to **formal** “online teaching” or “distance education”, and there is NOT a “substantial use of university resources”
- Do NOT agree to have those policies apply, unless they are beneficial for the faculty

Shared Governance and Bargaining

- Copyright policies are generally institution wide, important for faculty to work in concert, through AAUP Chapter or faculty senate
- Where unionized may have bargaining rights, otherwise can work through senate or Chapter
- Emergency vs. longer term - If did not bargain or get involved in current plans, can get involved in the longer term plans for the summer, fall semesters
- Can have different approaches to accomplish the same results - depends on local circumstances, and should be approached as a group through the chapter

The Shift to Remote Instruction at Eastern Michigan University

Judith Kullberg

Professor of Political Science

President, EMU-AAUP

The coronavirus crisis and remote instruction

- Administration informed us on March 11 of Governor Whitmer's directive to close public university campuses and shift to remote instruction *asap*.
- Classes cancelled March 12 & 13.
- All courses offered via remote instruction beginning March 16
 - EMU-AAUP insisted that faculty not be required to put their courses into Canvas and be allowed to use "a correspondence course" approach, but using email rather than USPS to communicate with their students.
 - Administration agreed in principle, although support has been almost entirely for online instruction through Canvas.
- EMU's Center for E-learning created Canvas course shells for all classes that did not already have them
 - Faculty were encouraged to teach through Canvas and to put their course materials in Canvas
- In addition, Zoom was made available to all instructors through Canvas beginning March 23

Online courses and EMU faculty's IP rights

- We had concerns related to the shift to remote instructions, but possible loss of our members' intellectual property was not one them.
- Why?
 - Provision in the current CBA
 - MP 227: "Faculty members who develop an on-line class retain all rights of ownership of the materials so developed."
 - Option of transferring those rights to EMU.
 - December 2018 LOA regarding contract with for-profit OPM Academic Partnerships
 - Reaffirmed MP 227 for classes delivered by AP

Remaining questions

- What are the legal enforcement mechanisms for violation of faculty members' intellectual property rights?
 - Is copying of material by an OPM detectable?
 - Cases of OPMs “caught” for using course materials without the authorization of their authors?
 - If so, were they fined/punished for such misuse?
- New concerns related to Zoom
 - Members worried that Zoom owns images and sound from class sessions
 - University attorney sent us this excerpt from the EMU's agreement with Zoom: “You retain copyright and any other rights You already hold in Content which you submit, post or display on, or through, the Services.”
 - This would seem to cover faculty IP rights, but again, does it really? How enforceable are those rights?

The Shift to Remote Instruction at Purdue University

David Sanders
Purdue University

October 15, 2019: “This is the first standard to address this issue.”,

- **Courseware and Online Modules (S-19)**
- Courseware and Online Modules are considered Commissioned Copyrightable Works. The University retains and manages copyright to Commissioned Copyrightable Works as Purdue Intellectual Property.
- Instructional Copyrightable Works may be deployed within Courseware or an Online Module and used by the University pursuant to its license set forth in policy I.A.1. An Instructional Copyrightable Work deployed within Courseware or an Online Module becomes part of that Courseware or Online Module. To meet the changing needs of students and the evolving educational landscape, the University is entitled to update and creatively modify Courseware and Online Modules, including Instructional Copyrightable Works deployed with them. An Author’s departure from the University does not change this entitlement.



AAUP PURDUE CHAPTER STATEMENT ON S-19

The American Association of University Professors Purdue chapter (AAUP-Purdue) notes with strong concern the release by the Purdue University administration of S-19 on October 15th. S-19 is a new standard governing Purdue's Intellectual Property policy. It gives the University broad power to hold intellectual copyright and ownership over Courseware and Online Modules designed by Purdue faculty. Purdue AAUP is concerned that this standard does not represent the interests of Purdue faculty, who were not consulted in its formation.

S-19 was released with little fanfare and to the surprise of various faculty stakeholder groups, and yet shortly after [the announcement](#) of a partnership between Purdue and edX to offer low cost Master's Degree programs through the Schools of Civil, Mechanical, and Electrical and Computer Engineering. The timing suggests the University wanted the Standard in place when edX began that favored the administration's concerns over faculty governance.

Purdue last revised their Intellectual Property policy in 2007 in order to clarify what had been considered a confusing policy. [From the press release](#):

"[Peter Dunn, associate vice president for research] says the revision process for the policy began in fall 2005, when President Martin Jischke appointed a task force of faculty and administrators to review the policy's effectiveness. In March 2006, the task force presented its findings and recommendations.

"We spent the next year reviewing the policy with stakeholders in the University, including deans, chancellors of regional campuses, and the Faculty Affairs Committee of [the] University Senate. It was broadly discussed to identify any issues that might be of concern to the University community," Dunn says."

In 2007, then, the administration sought a broad consensus among faculty and other stakeholders when crafting this new policy. According to the chair of the Faculty Affairs Committee of the University Senate, the FAC was excluded from the process of producing S-19, and it appears no other committees were consulted in this Standard's production.

Intellectual property rights are integral to the faculty's teaching and research, and thus we believe the faculty should be centrally involved in any such decisions regarding policy revisions or standards articulation. The lack of faculty involvement in crafting S-19 is of central concern to the AAUP, given that defending and strengthening faculty governance is a core part of our mission. Accordingly, we are frustrated that the

Standard was written with no significant involvement of the Senate, let alone other faculty stakeholder groups such as Purdue's numerous instructors and creators of online course offerings and materials.

We understand from our AAUP colleagues at IUPUI that [IU underwent a revision of their instructional intellectual policy in 2014](#), with significant faculty participation in the process. Their revised policy appears to provide much stronger guidance and structure to the protection of faculty rights than do our current standard and policy.

Given that revision to the previous IP policy went through the Faculty Affairs Committee of the University Senate, the AAUP Purdue chapter requests that the administration suspend implementation of S-19 until the University Senate has discussed it and had the opportunity to propose amendments.

We further call upon the University Senate to discuss and vote upon the changes to IP policy contained with S-19.

Finally, we urge all Purdue faculty members to withhold from signing Online Course Agreements until S-19 has been reviewed by the University Senate.

*This chapter statement was signed Nov 6, 2019.
Chapter statements must be approved by 50% or more of the chapter members.
Respectfully submitted by Alice Pawley, chapter secretary/treasurer.*

November 6, 2019

March 10, 2020

“The University is issuing rules on the response to the coronavirus crisis without seeking feedback from the faculty. This approach is in opposition to the guidelines that National AAUP has provided. Also the faculty need to understand the implications of S-19 and the loss of control over materials placed online.”

MARCH 13, 2020

FAQ

How are intellectual property issues going to be handled regarding material posted online for classes?

"Materials developed for online instruction in response to the Covid-19 outbreak will not be reused or commercialized, notwithstanding the University's Policy on [Intellectual Property \(I.A.1\)](#) and Standard S-19 related to Courseware and Online Modules."

Resources

AAUP Policy Statements

- [*Statement on Copyright*](#). 1999.
- [*Statement on Online and Distance Education*](#). 1999.
- [*Statement on Intellectual Property*](#). 2013.
- [*Defending the Freedom to Innovate: Faculty Intellectual Property Rights After Stanford v. Roche*](#). 2014.

Other AAUP Resources

- [AAUP Toolkit: Intellectual Property at Risk](#). Includes fact sheets, sample legislation, amicus briefs, and other resources as part of our campaign to protect intellectual property rights.
- [Sample Distance Education Policy & Contract Language](#).
- [Sample Intellectual Property Policy and Contract Language](#).
- [AAUP-CBC Contract Database](#). The AAUP-CBC maintains a database of faculty collective bargaining agreements, some of which address copyright or distance education.
- All are on the web at <http://www.aaup.org/issues/copyright-IP>

Other AAUP Resources

- [Faculty Anti-Privatization Network Toolkit](#)
- [Coronavirus Information for Higher Ed](#)