

Remote Teaching, Recording of Classes and Intellectual Property

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Introduction and Lawyer Caveats

- Cannot and are not providing legal advice
- 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
- Copyright can be complicated and not addressing in overall here, we are going to discuss impacts of remote work and particularly class recordings
- April 2020 Webinar broader overview and review of faculty use of material copyrighted by others (fair use)
- Examples Provided Here – Not AAUP recommendations. Just samples to give ideas or to show how things can be done. May not be best, or feasible, for others.

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

- Most institutions faculty own copyright to traditional scholarly works
- University may have a license for certain uses
- 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 can be distinct
- Online teaching - may have specific policies or agreements addressing, including different copyright clauses
- AAUP has a Statement, Sample Policies and other resources, see slide 20-21
- Copyright - there is NO usual status. Very institution dependent

Copyright - Remote Learning and Recordings

- Recording or use of zoom or video **alone** does not transfer the ownership of the copyright
- Still dictated by copyright agreements and policies
- However, there can be greater risk of misuse
- Different Issues with
 - Unauthorized users or uses
 - Providers
 - University
 - Students and secondary users
 - Limitations or restrictions on use and destruction of recordings

Unauthorized Users

- Zoom Bombers – really a technical solution
- Improper use by University employees or others
 - Typical Copyright law protection
- CourseHero and others
 - [University of California](#): If you are concerned about students posting materials to CourseHero, know that CourseHero has advised UC counsel that its filtering tool will, in nearly all instances, prevent the upload of materials that include this sentence in the header or footer: *“This content is protected and may not be shared, uploaded, or distributed.”*
 - If you find that your material has been uploaded to CourseHero, assert your copyrights by sending a DMC takedown notice using the CourseHero [takedown portal](#).

Providers - Terms of Use

- Generally do not affect ownership of copyright
- Online platforms have policies that grant them licensing, but not ownership, rights related to the delivery of the content. This is often a necessary provision to allow the platforms to retain or share copyrighted materials with approved users (like students).
- 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
- Problems with restricting academic content. A different issue.

University Policy - 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 spring/summer changes plans, can get involved in the longer term plans for future semesters
- Can have different approaches to accomplish the same results - depends on local circumstances, and should be approached as a group through the chapter

University Policy - Approach in COVID Times

- 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
- Negotiate or get clarity where needed

Online Course Development

- Existing development of *online* courses
- Shared governance oversight
 - Content
 - Modality
- Incentives/Programs for online content development

Academic Emergency Policies

- Academic Emergency Declaration
 - Change in policies
 - Who Decides?
- Academic continuity
- Changes to modality
- Development of Academic Emergency Policies for future emergencies

University Policies – Examples of clarifications

- [University of California](#): Guidance on UC Davis Instructor Copyright During COVID-19 Crisis
 - “INSTRUCTORS OWN THE COPYRIGHTS TO THEIR COURSE MATERIALS, INCLUDING RECORDINGS OF THEIR LECTURES”
 - “COURSES TAUGHT REMOTELY DUE TO COVID-19 ARE NOT CREATED USING EXCEPTIONAL UNIVERSITY RESOURCES”
- [University of Minnesota](#): COVID, Copyright, and Courses
 - The University of Minnesota's Copyright Ownership Policy affirms that faculty members and faculty-like employees own the copyright in their academic works, including instructional content.

Students - ADA Required Recordings

- Americans With Disabilities Act & Rehabilitation Act of 1973
- Faculty may be required to provide recordings to or permit recordings by students with disabilities as a reasonable accommodation
- Students must first request accommodation
- [Dept of Ed. - Postsecondary Students with Disabilities](#)
 - “[I]n postsecondary schools, the students themselves must identify the need for an auxiliary aid and give adequate notice of the need.”
- Since students must first request the accommodation before a reasonable accommodation is required, **the need to provide reasonable accommodations should not be used as universal justification to provide recordings to all students**

ADA Recordings – Restrictions Permissible

- Providing class recordings as reasonable accommodation does not change copyright ownership
 - Faculty still control use of recordings outside of the reasonable accommodation required, and
 - Can place restrictions on use of class recordings
- Dept. of Education, [Postsecondary Students with Disabilities](#)
 - “In order to allow a student with a disability the use of an effective aid and, at the same time, protect the instructor, the institution may require the student to sign an agreement so as not to infringe on a potential copyright or to limit freedom of speech.”

Recordings – Other Limitations/Issues

- Wiretap Laws
 - State wiretap laws may prohibit student recording of classes by legally requiring all parties to consent to being recorded
 - Two party consent v. one party consent
 - Some states may have exception for spaces where there is not a reasonable expectation of privacy
- Universities and others recording lectures should disclose to students that they may be recorded and collect consent from students
 - [University of California-Irvine Recordings Policy](#) : “...all students should be aware that any class, and discussions held therein, may be subject to recording.”

Recordings – FERPA Limiting Student Use

- FERPA requires student consent before disclosure of personally identifiable information in certain education records
- Department of Education Recommended Best Practices for Recorded Classes: [FERPA & Virtual Learning During COVID-19](#) (March 30, 2020)
 - “[E]ducational agencies and institutions should discourage non-students from observing virtual classrooms in the event that PII from a student’s education record is, in fact, disclosed in such virtual classrooms.”
 - “Schools may wish to include instructions for students participating in the virtual classroom regarding not sharing or recording any PII from education records that may be disclosed in the virtual classroom or to obtain prior written consent to permit any such sharing of PII from education records.”

Recordings – Limiting Use

- Examples: [University of California-Irvine](#) : “Unless otherwise expressly allowed by the professor, students may not record a class.”
- [Northwestern Synchronous Recordings Policy](#): “Students are prohibited from recording class sessions and are also prohibited from the distribution of class recordings.”

Sample Syllabi Statement

- [Northwestern Synchronous Recordings Policy](#):
- As part of our communication to students, all instructors have been asked to include the following statement on all Syllabi for Summer Quarter, 2020 classes:
- Unauthorized student recording of classroom or other academic activities (including advising sessions or office hours) is prohibited. Unauthorized recording is unethical and may also be a violation of University policy and state law. Students requesting the use of assistive technology as an accommodation should contact [AccessibleNU](#). Unauthorized use of classroom recordings – including distributing or posting them – is also prohibited. Under the University's [Copyright Policy](#), faculty own the copyright to instructional materials – including those resources created specifically for the purposes of instruction, such as syllabi, lectures and lecture notes, and presentations. Students cannot copy, reproduce, display, or distribute these materials. Students who engage in unauthorized recording, unauthorized use of a recording, or unauthorized distribution of instructional materials will be referred to the appropriate University office for follow-up.

Recordings – Destruction

- University policies may permit instructors to require students to destroy any class recordings after the end of the term, even if those recordings are held as a reasonable accommodation
 - [University of Montana Policy](#): Instructors elect whether to require students receiving recordings or recording classes to destroy them at the end of term
 - [Macalester College Policy](#): Requires all recordings to be destroyed or stored with their Office of Disability Services

Recordings – Use Against Faculty

- Potential for recordings to be used against faculty
- Question of whether the recording, distribution, or use of it violates university policy, due process, student handbooks etc.
- Normal protections for faculty would apply to use of recordings as a basis for action against faculty.

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](#)

Break Out Facilitators

- Caprice Lawless, Front Range Community College
- Mark James, Molloy College
- Monica Owens, Issue Campaigns Organizer, AAUP