

Intellectual Property and Online Courses: Policies at Major Research Universities

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Abstract: This study describes an investigation of the intellectual property policies of 42 public and private Carnegie Doctoral Research – Extensive Universities. Using a policy analysis framework based on earlier work by Lape (1992) and Packard (2001), policy differences between public and private universities and policy changes across time were analyzed and documented. Although few differences were seen between public and private research universities, substantial changes between the 2001 policies and the 2005 policies were evident. Results were interpreted in terms of the need for comprehensive and explicit policies to support online course development and delivery.

Overview and Introduction

The purpose of this study was to investigate current intellectual property policies of doctoral research universities with respect to online course materials. As the proliferation of distance-learning opportunities continues in this era of educational accountability, educators, administrators, and institutions will need to insure that institutional policies protect and support an environment that fosters creativity, productivity, and academic freedom. This study provides a foundation upon which to analyze, critique, and further develop coherent and comprehensive copyright and ownership policies related to online course materials.

This research is intended to build on the findings of Lape (1992) and Packard (2001) by analyzing current copyright policies and specifically focusing on faculty intellectual property ownership issues related to courseware and other educational digital media. Online courses are proliferating at institutions of higher learning. The National Center for Education Statistics reported: “In 2000–2001, 90 percent of public 2-year and 89 percent of public 4-year institutions offered distance education courses” (U.S. Department of Education, p. iii). The increasing use of online courses raises questions about the ownership of course materials and can increase tensions between faculty members and their universities regarding rights and responsibilities associated with online courses. These questions and tensions are especially important issues for online courses because of the portability of such courses. As Twigg (2000) pointed out, “there has never been much need to figure out if one party owned a course as a commodity that could be sold elsewhere. But information technology and the Internet appear to have changed the status quo” (p. 1).

Background

Previous research suggests university policies are in a state of flux. For example, Lape (1992) investigated 70 research universities and found that 11 had no written policy and 5 had only draft policies. Less than 10 years later, Packard (2001) studied the same sample of universities and found that all but one had adopted a policy. In both studies, all of the policies that were analyzed asserted the university’s claim

to ownership of at least some faculty works. The typical justification for such ownership is that faculty works are created with university resources.

Of note is that Lape (1992) found 16 policies that disclaimed ownership of ‘traditional’ scholarly works and Packard (2001) found 49 policies with such disclaimers. However, only 12 universities in the latter study evidenced policies giving explicit control of educational materials to faculty. The American Association of University Professor’s (AAUP) position on copyright ownership asserts that the faculty member who created the work is the legitimate owner of the work, regardless of the physical medium in which the work appears yet acknowledges that there are circumstances in which the university has claim to co-ownership rights (AAUP, 1999b). Other authors (see, for example, Thompson, 1999) also conclude that many policies focus on the product itself rather than the conditions of its creation.

With the implementation of distance learning through digital delivery tools such as courseware, electronic mail and other Internet technologies, the AAUP statement about allocation of copyright ownership interests between institutions and faculty members indicates that institutions’ regulations should “be reflected either in widely available institutional policy documents or in collective bargaining agreements” (AAUP, 1999a). The statement further articulates that the institution should be reimbursed for:

“...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.”

The protection of copyright originated in the Constitution of the United States, whereby Congress is required to pass laws with the purpose of providing authors exclusive rights to their works for a limited timeframe. Its primary goals are to increase public’s access to useful works, encourage new creations and positively influence society’s development and improvement.

Title 17 of the US Code defines copyright as an author’s independent and original expression recorded in a fixed and tangible form. As soon as the copyrighted material is recorded in a tangible format, such as a manuscript or an electronic file, it automatically becomes protected. However, registration with the copyright office provides additional protections in case of infringement and is often in the best interest of the author if infringement becomes an issue. A copyrighted work can be reproduced,

adapted to create derivative works, distributed, displayed and performed in public by the author. The latter can also transfer rights to others. If copyrighted material is reproduced without the permission of the owner, the violator can be liable for copyright infringement. Some examples of copyrightable works are poems, software, and multimedia materials. In the context of copyrightable works in an academic setting, with which this paper is primarily concerned, examples consist of books, scholarly publications, syllabi, PowerPoint files containing course content, web-based course content, and lecture notes. Materials such as ideas, facts, and discoveries do not qualify as copyrightable under this definition as they are not fixed in a tangible form.

Works made for hire. Section 26 of the 1909 Act specifies that the “author” of a copyrightable work “shall include an employer in the case of works made for hire” (Copyright Act of 1909). Although the Act defined works made for hire as ‘a work prepared by an employee within the scope of his or her employment’ (17 U.S.C. § 101), courts have interpreted it to provide ownership to the employer in several cases if the employer granted a long-term employment relationship with salary and benefits for the employee, supervision of work resources and space to produce the copyrightable material, assigned the work schedule and projects. The court cases, which used the 1909 Act, did not consistently and explicitly specify what constitutes a work made for hire. They sometimes required a contractual agreement between the two parties to prove that ownership resided with the employee.

Even though they enjoy a long-term employment relationship with benefits covered by academic institutions, are assigned a teaching and research load by the employer, and use university resources to produce their work, faculty have traditionally benefited from an exception to the works made for hire doctrine. This is demonstrated by the fact that none of the cases judged after the 1909 Act determined that a contractual agreement needed to exist for faculty work to be considered works made for hire (Lape, 1992). The exception reserved to faculty work was often explained by academic institutions’ policy, custom, and effort to promote academic creativity and freedom of thought and expression. Traditionally, faculty have been free to select their research agenda, course materials, and presentation materials.

The 1909 Act was however superseded by a revision in 1976. This Act builds on the preceding 1909 Act when defining the works made for hire. The new Act does not mention the faculty exception to works made for hire or that the doctrine has been eliminated. This led several individuals to conclude that the faculty exception has been eliminated. Instead it defines the evidence needed to attribute ownership once a work made for hire has been determined. Lape (1992) asserts that “the 1976 Act did not disturb the professors’ exception from the work-made-for-hire doctrine; to the extent that such an exception ever existed, it continues to exist” p.246. Subsequent cases were decided on the basis that an employee or an independent contractor owns the work only if there is prior evidence of an explicit written agreement. Courts based their verdicts on two pivotal cases to determine ownership: Williams versus Weisser and

Sherrill versus Greives. These cases provided basis for the existence of the exception rule for professors prior to the 1976 Act (in each case, the courts decide that the educational materials belonged to the faculty members).

In the absence of a written contract giving ownership rights to the faculty member, or in instances in which the work is a special commission by the institution and the faculty is provided with additional release time or compensation to develop distance learning course content or tests, then the exception to the works made for hire may no longer apply and ownership may reside with the employer. In the situation of a work made for hire, the ownership is transferred from the original owner to the employer, which in turn modifies the duration of the copyright from 50 years in the case of individual ownership, to 75 years with an organizational ownership.

Previous Research on Intellectual Property Policy. Stretching over a decade, two previous studies sought to document the rights of university professors as they related to the creation of intellectual work. Lape (1992) and Packard (2001) reviewed the intellectual property rights policies of 70 Research I universities. Lape identified 59 of the 70 institutions that had written policies and guidelines for faculty work. Packard found that all but one of these institutions had developed written policies nearly ten years later.

A primary reason for a university to claim a faculty member's work is that the faculty member used a substantial amount of university resources in the work's creation. There are many variations to the definition of "substantial" across the universities, but Lape (1992) found that 42 of the 70 universities studied included this type of claim. Packard found that this number increased to 52 universities in 2001.

In cases of disagreements about claims of ownership, some policies delineate arbitration processes to be followed to resolve such disputes. In the policies that address arbitration, most rely on a committee of some sort within the university system to make judgments and clarifications. The Lape study does not provide numbers, but Packard notes that 33 of the reviewed institutions require this type of in-house arbitration. It is also interesting to note here that both studies found that many policies contained conflicting information, and were poorly worded with confusing language and undefined terms.

There was a shift in addressing "academic freedom" across the two studies. Lape (1992) found that 26% of the university policies recognized academic freedom for professors, while Packard (2001) found that 42% of the university policies recognized academic freedom almost ten years later. This corresponds to a change in protection of what a university policy defines as traditional scholarly work. In 1992 23% of the universities studied protected this work. This figure rose to 71% in 2001.

The "work-for-hire" concept is used by many universities to define what faculty work can be owned by the university. The number of universities using this justification has jumped from 25 to 37 from Lape in 1992 to Packard in 2001. It is important not to look at just these numbers in comparison, but

also at how the university defines work-for hire. Some define this work as it relates to the Copyright Act while others have created their own unique definitions within their policies and may even require faculty member signatures before they begin such work.

Packard found that 34 universities now include software in some way in their policies. Lape found that 19 policies listed computer programs in their policies almost ten years earlier. Intellectual property issues associated with software and other electronic materials are more complex with the growing number of on-line courses and programs at universities, and the increasing use of technology by faculty members to administer their courses. It is important to consider that in the past, traditional scholarly work was not a primary source of revenue for the university. The advent of the development of digital formats, such as courseware and software, for these works may affect how universities define traditional scholarly work in future policies. It is also not clear how well university policies hold up under the scrutiny of court. The outcome of future cases will likely mean changes in how these policies are written and enforced.

Digital course materials. In the context of distance learning, some institutions and faculty tend to face an impasse when no policy is present to dictate who owns produced materials. One of the reasons advanced is that digital course content development often consumes a significant amount of institutional resources such as instructional design and multimedia time, server space, management, and maintenance, specialized software, and other infrastructure related expenditures. Conversely, faculty members devote considerable time and effort, and wish to be recognized accordingly to help fund and develop their future research and publications.

One element that complicates matters is that materials developed by faculty with institutional resources can easily be transferred through digital media, and can rapidly reach large audiences. Therefore the need to have a clear understanding of who owns the digital materials becomes extremely important to ensure creators are compensated appropriately, institutions are awarded a return on their infrastructure and other investments, and both conflicts and frustration are minimized.

Method

A stratified random sample of 42 Carnegie Doctoral Research–Extensive universities was drawn consisting of 28 public universities and 14 private universities. A sample of 42 policies provides statistical power of .80 for tests of differences in proportions, if the effect size is at least medium (Cohen, 1988) and provides 95% confidence intervals that are no larger than $\pm 13\%$. Although some of the universities are the same as those studied by Lape (1992) and Packard (2001), many are different because Carnegie classifications have changed over the years. However, the sample for each study represents the top classification of research universities at the time.

Copyright and intellectual property policy documents were obtained from university websites (Appendix B). In some cases, more than one web document was located for a single university. Common locations were faculty rules, administration rules, faculty manual or handbook, and, in some cases, a stand-alone Intellectual Property policy.

A preliminary framework for content analysis was developed based on the work of Lape (1992) and Packard (2001) resulting in 36 categories, including copyright, compensation, use, portability, third-party licensing, and exclusions/limitations. Additional themes were incorporated focusing on distance learning (e.g., whether or not the university's policy included courseware or distance learning materials). The final worksheet used to code the universities' policies contained 40 categories and is attached as Appendix B. Coding was limited to Yes, No, or Not Mentioned.

Eight researchers worked on coding the university policies using the 40-item framework. Each university's policy was independently coded by two individuals who then resolved any differences in item ratings. Inter-rater agreement for these data was 87%.

Results

The results of this study are presented in three sections: an analysis of differences between public and private research universities in the 2005 sample, an analysis of policy changes across the three samples, and a description of the typical research university policy in 2005.

Public vs. Private Research Universities. The initial analysis of the universities' policies investigated differences between public and private institutions. The framework percentages by type of university are displayed in Table 1. Differences in sample percentages were tested using a chi-square test of independence for each item in the framework.

Of the 40 items in the framework, only three items evidenced statistically significant differences between public and private universities: claiming works created with substantial resources, explicit statement of commitment to academic freedom, and citation of the works for hire aspect of the copyright law (Figure 1). Although a majority of both types of institutions claimed works created with substantial resources, a significantly larger percentage of private universities (93%) asserted such claims than did public universities (64%). Similarly, 79% of the private universities in the sample claimed works for hire pursuant to copyright law or within the scope of employment in their copyright policies while only 46% of the public universities did so. In contrast to these aspects of the universities' policies, 100% of the private universities' policies stated a commitment to academic freedom but only 64% of the public universities included such a statement.

Table 1
Intellectual Property Policy Characteristics of Public and Private Research Universities.

Policy Characteristic	Institution Type	
	Private	Public
On-line policy	100%	100%
U claims some faculty works	100%	93%
U claims works created with any university resources	36%	36%
* U claims works created with substantial resources	93%	64%
U defines substantial resources	71%	50%
U disclaims ownership of traditional scholarly works	93%	93%
U lists exceptions to (J)	79%	68%
U includes courseware or DL materials in definition of scholarly works	36%	43%
U cedes control of syllabi, tests, notes, etc. to profs	50%	50%
U includes materials posted on the Web in (M)	36%	29%
* U says it's committed to academic freedom or free dissemination of ideas	100%	64%
U claims ownership using academic freedom as basis	14%	4%
U distinguishes computer programs from other works	79%	61%
U has separate policy dealing with software	29%	25%
U treats computer programs under patent policy	36%	29%
U has separate policy or section for distance learning courses or courseware	21%	21%
U claims ownership of courseware or distance learning materials	50%	29%
U claims works produced due to specific, direct, or written job assignment/duties	64%	82%
U claims works produced by persons hired to produce such works	86%	71%
U claims commissioned works	57%	71%
* U claims works for hire pursuant to Copyright Law or within scope of employment	79%	46%
U considers work for hire to be extra work assigned to prof	14%	32%
U requires work for hire agreement to be signed before work begins	21%	25%
U claims joint ownership	21%	29%
U claims royalty-free license	64%	43%
U offers to share a percentage of royalties	93%	96%
Provisions for allowing profs to control use of a work w/i univ	21%	25%
Policy allows profs to revise their works	14%	32%
Policy grants authors right to continued use for nonprofit academic purposes	29%	21%
Policy grants authors the right to make derivative works	14%	21%
Policy gives profs unilateral control of work licensed for use outside univ	7%	14%
Copyright ownership transfer to prof if commercialization or publication does not take place within period of time	43%	50%
Even if ownership transfers to prof, univ retains license or right to derivative work	43%	21%
Committee decides ownership	57%	54%
Binding arbitration	21%	4%
Administration settles disputes	71%	61%
Agreement signed by prof	29%	46%
Agreement signed by univ	14%	25%
Policy provides provisions for enforcement	43%	29%
Policy contains undefined terms, inconsistencies or vague language	36%	39%

* $p < .05$

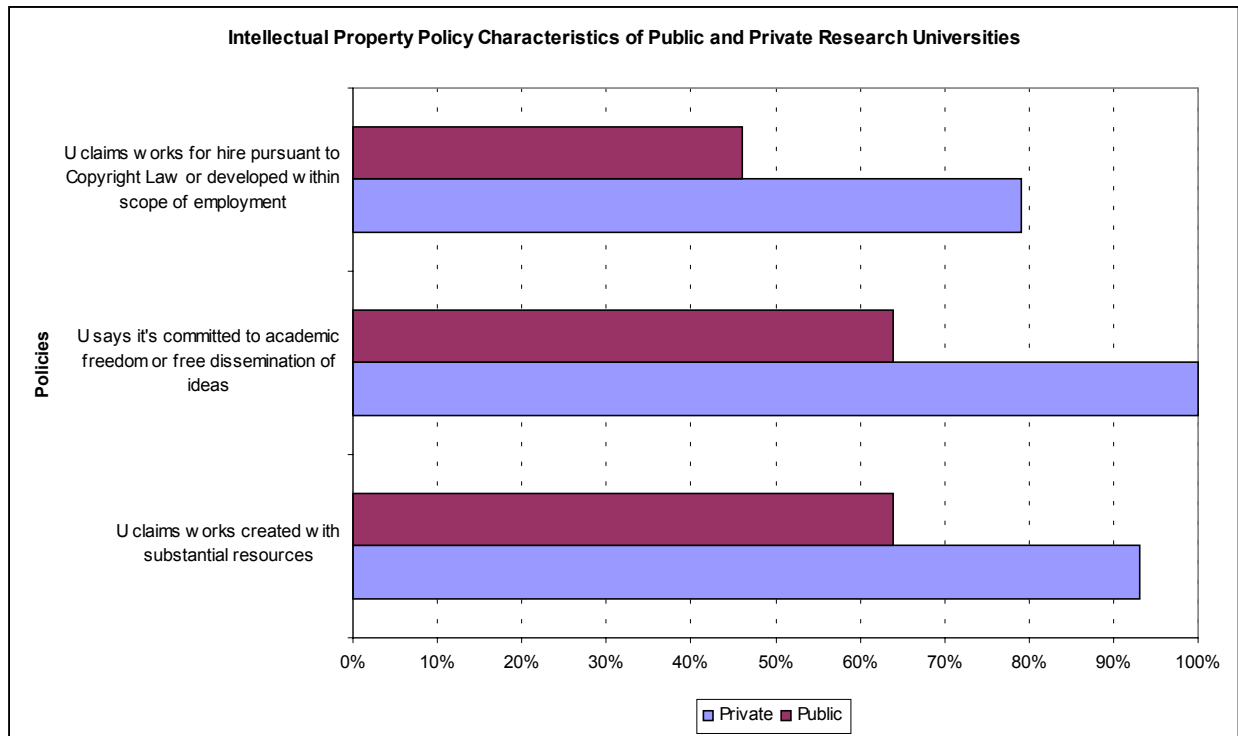


Figure 1: Significant Differences Between Public and Private Universities

Policy Changes Across Time. The framework percentages by year are displayed in Table 2. Differences in sample percentages were tested using logistic regression for each item in the framework (logistic regression was used instead of the usual Pearson chi-square because the former allows the overall test of significance to be disaggregated into specific contrasts between pairs of years). Although the analysis of public vs. private universities suggested few differences, the analysis of policy changes across time indicated that statistically significant differences were obtained on 26 of the 40 items in the framework.

The percentage of universities with adopted policies increased from 77% in 1998 to 100% in both 2002 and 2005. Further, policies that claim at least some faculty works increased from 77% in 1998 to 100% in 2002, then dropped slightly to 95% in the 2005 sample (with both the 2002 and 2005 sample percentages being significantly larger than the 1998 sample). Policies that claim works produced with ‘substantial resources’ increased significantly from 60% to 83%, then reduced to 74% in 2005 (a decrease that was not statistically significant). Conversely, the 2005 sample evidenced a significantly larger percentage of policies that explicitly defined ‘substantial resources’ (57%, vs. 23% and 29% for 1998 and 2002, respectively).

Table 2
Changes in Intellectual Property Policy Characteristics between 1992 and 2000.

Policy Characteristic	Year		
	1998	2002	2005
* Adopted Copyright Policy	77%	100%	100%
* U claims some faculty works	77%	100%	95%
U claims works created with any university resources	-	-	36%
* U claims works created with substantial resources	60%	83%	74%
* U defines substantial resources	23%	29%	57%
* U disclaims ownership of traditional scholarly works	23%	71%	93%
* U lists exceptions to (above)	3%	1%	71%
U includes courseware or DL materials in def of scholarly works	-	-	40%
* U cedes control of syllabi, tests, notes, etc. to profs	-	17%	50%
U includes materials posted on the Web in (above)	-	-	31%
* U says it's committed to academic freedom or free dissemination of ideas	26%	42%	74%
U claims ownership using academic freedom as basis	-	-	7%
* U distinguishes computer programs from other works	27%	28%	67%
* U has separate policy dealing with software	7%	7%	26%
* U treats computer programs under patent policy	6%	3%	31%
U has separate policy or section for DL courses or courseware	-	-	21%
U claims ownership of courseware or distance learning materials	-	-	36%
* U claims works produced due to specific, direct, or written job assignment or duties	36%	54%	76%
* U claims works produced by persons hired to produce such works	13%	17%	76%
* U claims commissioned works	14%	33%	67%
* U claims works for hire pursuant to Copyright Law or within scope of employment	9%	26%	57%
U considers work for hire to be extra work assigned to prof	-	-	26%
U requires work for hire agreement to be signed before work begins	-	-	24%

* $p < .05$

Table 2 (Cont'd)
Changes in Intellectual Property Policy Characteristics between 1992 and 2000.

Policy Characteristic	Year		
	1998	2002	2005
* U claims joint ownership	26%	7%	26%
* U claims royalty-free license	14%	23%	50%
* U offers to share a percentage of royalties	66%	72%	95%
* Provisions for allowing profs to control use of a work w/i univ	7%	10%	24%
Policy allows profs to revise their works	10%	14%	26%
Policy grants authors right to continued use of work for nonprofit academic purposes	-	-	24%
* Policy grants authors the right to make derivative works	1%	9%	19%
* Policy gives profs unilateral control of work licensed for use outside univ	-	-	12%
* Copyright ownership transfer to prof if commercialization does not take place	9%	23%	48%
Even if ownership transfers to prof, U retains license or right to derivative work	-	-	29%
Committee decides ownership	-	48%	55%
Binding arbitration	-	4%	10%
* Administration settles disputes	-	43%	64%
* Agreement signed by prof	9%	12%	40%
* Agreement signed by univ	9%	-	21%
* Policy provides provisions for enforcement	-	12%	33%
Policy contains undefined terms, inconsistencies or vague language	-	-	38%

* $p < .05$

Policies that disclaimed ownership of traditional scholarly works increased from 23% to 71%, and further increased to 93% in the 2005 sample. A similar pattern of significant increases across each of the three years was evident for the percentage of policies that contain explicit statements of commitment to academic freedom (26%, 42%, and 74% for 1998, 2002, and 2005, respectively).

The percentage of policies addressing software and computer programs showed no change between 1998 and 2002, but increased significantly in 2005. Specifically, policies that distinguished computer programs from other works increased from 27% and 28%, to 67%; and separate policies dealing with software increased from 7% (in both 1998 and 2002) to 26% in 2005. Finally, the treatment of computer programs under the patent policy increased from 6% and 3%, to 31% in 2005.

The 2005 data evidenced significant increases in the percentage of policies that asserted university claims to works produced as a result of specific, direct, or written job assignments or duties (76% vs. 36% and 54% for the earlier years). Similarly, policy statements claiming works produced by persons hired to produce such works increased from 13% and 17%, to 76%; and the claiming of commissioned works increased from 14% and 33%, to 67% in 2005. Finally, the inclusion of works for hire claims increased from 9% in 1998, to 26% in 2002, and to 57% in 2005.

Twenty-six percent of the universities claimed joint ownership of some works in 1998, a percentage that dropped significantly to 7% in 2002, but returned to 26% in the 2005 sample. Conversely, increases were evident in the percentage of universities that claimed royalty-free license (14%, 23%, and 50% in 1998, 2002, and 2005, respectively), the percentage that offered to share royalties (67%, 72%, and 95%), and the percentage that transferred copyright ownership to the work's creator if commercialization did not occur in a specified time period (9%, 23%, and 48%). Further, increases were seen in the percentage of universities that allowed the author to control the use of the works (7%, 10%, and 24%), and the percentage that granted authors the right to make derivative works (1%, 9%, and 19%), although both aspects were present in only a minority of universities' policies.

An increase was evident in the percentage of universities' policies that asserted settlement of disputes by the university administration (64% vs. 43% in 2002), and the percentage that required written agreements signed by the professor (9%, 12% and 40%) and signed by university officials (9% in 1998 and 21% in 2005). Finally, the proportion of universities with policies that provided a provision for policy enforcement increased from 12% in 2002 to 33% in 2005.

Typical Policy at a Research University in 2005. An examination of the percentages of universities in the 2005 sample that include each characteristic in their policies suggests a profile of the intellectual property policy at a "typical" research university. The following characteristics were

identified in more than 50% of the universities, suggesting that they are likely to appear in university policies related to intellectual property (see Table 2).

- University has adopted an online policy for intellectual property
- University claims some faculty works
- University claims works created with substantial resources
- University defines substantial resources
- University disclaims ownership of traditional scholarly works
- University lists exceptions to traditional scholarly works
- University cedes control of syllabi, tests, notes, etc., to professors
- University says it's committed to academic freedom or free dissemination of ideas
- University distinguishes computer programs from other works
- University claims ownership of courseware or distance learning materials
- University claims works produced due to specific, direct, or written job assignment/duties
- University claims works produced by persons hired to produce such works
- University claims commissioned works
- University claims works for hire pursuant to Copyright Law or within scope of employment
- University claims royalty-free license
- University offers to share a percentage of royalties
- Committee decides ownership
- Administration settles disputes

All of the universities selected for this study had an online policy related to intellectual property – in fact some had more than one! The policies were located via web searches (such as Google) as well as targeted searches on university websites. In many cases, the policy was a part of the Faculty Handbook; in others, it was located in the Research area of a website. Some of the policies were very concise – a paragraph or two; others were extremely comprehensive. At some universities, two or more, sometimes contradictory, policies were located. For example, the Oregon University Systems' *Policies relating to Inventions, License Agreements, Educational and Professional Materials Development, Patents, and Copyrights* specify that “Educational and professional materials, whether or not registered for copyright, that result from the instructional, research or public service activities of the institutions” (Section 580-043-0011) be assigned to the Oregon Board of Higher Education. In contrast, the *Internal Management Directives of Oregon State University* stipulate:

...the ownership rights to all forms of educational and professional materials in the form of books, musical, or dramatic composition, architectural designs, paintings, sculptures, or other works of comparable type developed by institution and Board employees, either in conjunction with or aside from their employment, shall accrue to the author, unless the material is prepared in compliance with contractual provision or as a specific work assignment, or significant institutional and Board resources were utilized (Section 6.215).

All of the universities claimed they were committed to academic freedom and almost all (93%) disclaimed ownership of traditional scholarly works. For example, the policy at Notre Dame states: “In

keeping with the University's general policy of not claiming ownership in the scholarly works of its creators, educational materials produced in the normal course of our educational mission will, generally speaking, be owned by the creators of the material" (University of Notre Dame, Faculty Handbook, p. 133). However, most of the universities claimed at least some of the faculty works, generally those that were commissioned or that were created with "substantial" university resources. The definition of "substantial" varied slightly from university to university, but was generally interpreted to mean the use of equipment and resources beyond the professor's office computer and university library. For example, Virginia Commonwealth University policy states, "customary and normal usage of University facilities, telecommunications systems (telephone and internet access), web and file servers, course management software (e.g. Blackboard), library resources, secretarial help, office equipment, or other support services do not constitute a significant use." (Intellectual Properties Policy, p. 6).

The "typical" university policy has a separate section or separate policy related specifically to computer programs. In many cases, computer programs are covered in a specific section of the copyright or intellectual property policy; in other cases, they are included with the policies related to patents. It is also interesting to note that materials related to distance education would not appear in a separate section of a "typical" policy, since only 21% of the universities specifically addressed distance learning materials.

If the "typical" university obtains royalties from works that are created by its employees, the university will share a percentage of the royalties with the creator(s). For example, at the University of Illinois, "the creator (or creator's heirs, successors, and assigns) normally shall receive forty percent (40%) of net revenue" (Intellectual Property Policy, Section 8). However, if the creator retains ownership, the university may claim a royalty-free license. The Marquette University policy states, "Authors of teaching and classroom materials, such as class notes, syllabi, curriculum guides, or laboratory notebooks, shall grant the University a non-exclusive, Royalty-free, perpetual license to use, display, copy, distribute, and prepare derivative works for internal University use" (Marquette University Intellectual Property Policy, Section 4.A.1).

Typical policies related to intellectual property would also include verbiage related to the settlement of disputes. Although most universities have committees (consisting of faculty members and administrators) to decide ownership, the final decision (in the case of a dispute) rests with the administration. For example, the University of Kansas policy states, "Final decisions on disputed matters will be made by the Chancellor or designee and shall constitute final University action" (Section D, The University of Kansas Intellectual Property Policy).

Discussion and Conclusions

The interpretation of the results of this research must be tempered with recognition of its limitations. First, the university policies analyzed in this project represent only a sample of policies rather than the complete corpus. Although the stratified random sampling design employed provides a representative sample of policies, the potential impact of sampling error must not be neglected. In addition, the policies obtained from the sample universities were those provided online as part of the universities' website. The currency and accuracy of these policies were assumed but were not verified with university administration. The potential exists that some of the policy documents may not be the most recent employed at the studied institutions.

In light of these limitations, the following interpretations and conclusions are suggested. Although few differences were evident between public and private institutions, substantial changes are clear in the comparison of policies in 1992, 2001 and 2005. Lape (1992) found that most of the universities' copyright policies tried to protect some of the interests of professors. She concluded that university copyright policy must be written into the employment contract and signed by both the university and the professor in order to protect and maintain the copyright ownership of the professor. Nearly ten years later, Packard (2001) found that although universities were disclaiming some faculty works in their policies, they were claiming others. Many of the universities in her study did protect faculty rights to their traditional scholarly works; however, in order to enforce these policies and assure the rights of faculty to control these works, contracts had to be signed by both the professor and the university. In our study, this continues to be an area of concern, since 40% of the intellectual property policies require faculty to sign agreements, but only 21% also require the university to sign.

By 2005 all of the universities in our study had published their intellectual property rights policy on the Internet. Our investigation found that most Universities are writing intellectual property rights policies to delineate the rights of faculty to their works. Although 93% of these policies designated that professors should have control of their traditional scholarly works; 71% of these universities specifically listed exemptions to this policy. Most universities (95%) claimed some faculty works, especially if the works required substantial use of university resources (83%). On a positive note when the university did claim rights to the intellectual property of a faculty member, 95% offer to share a percentage of the royalties.

Our research also revealed some areas of concern. Although half of the universities gave control of syllabi, tests and notes to faculty, only 31% of these institutions also included materials posted to the web and 36% of the universities claimed ownership of courseware and distance learning materials. A substantial majority of universities claim the intellectual property rights for materials that faculty are given specific assignments to produce (76%), are specifically hired to produce (76%), or are

commissioned to produce (67%). Another area of concern is the increase in the number of universities that make some claims in their policies to works developed within the scope of employment or according to the Copyright Law for works-for-hire or (currently 57%). The last trend of concern is the significant increases in having administration settle copyright disputes with the faculty (64%).

From a budget and finance perspective, as the trend of digitizing course content to meet the needs of learners continues to expand and provide significant sources of income for universities, the need increases for comprehensive and coherent policies that will not only ensure the quality of products delivered with the university's stamp, but also ensure future sources of income in an era of decreasing state funding. Conversely, from a scholarly perspective, as the demand for distance learning and digital courseware increases, we expect that universities will be pressed by both their boards of directors and their faculty senates to protect the abilities of both the university and the faculty to retain control over their creative educational endeavors. Unless universities and their faculty are willing to allow outside private enterprises to capitalize on their efforts without recompense, they must assure the rights of the professor by writing specific intellectual property rights policies that are signed by both the faculty member and the university. Without the support of the institution in protecting the rights of its faculty to their creative products, faculty may be unwilling to publish to the Internet and the universities will be hard pressed to meet the demand of their students for distance learning courses. Ultimately, faculty and universities must work together in order to preserve control of their scholarly work.

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Appendix A

Web Sources for Intellectual Property Policies

University	URL
Arizona	http://vpr2.admin.arizona.edu/Interim_IPP/IP-UA-interim.pdf
Brown	http://www.brown.edu/Faculty/Faculty_Governance/rules.html
California - Santa Barbara	http://ucsbuxa.ucsb.edu/policies/vcas/business-serv/5210_copyrights.html
Colorado State	http://facultycouncil.colostate.edu/files/manual/sectionj.htm
Duke University	http://www.provost.duke.edu/fhb.pdf
Emory	http://www.ott.emory.edu/share/policies/intellectual_property.pdf
Georgetown University	http://otl.georgetown.edu/GU_Patent_Policy_12.01.03.pdf
Idaho	http://www.webs.uidaho.edu/fsh/5300.html
Kansas	http://www.ku.edu/~vcinfo/Copyright/KBOR%20IP%20Policy.htm and http://www.provost.ku.edu/policy/intellectual_property_policy/
Louisville	http://thinker.louisville.edu/ippolicy.htm
Loyola University Chicago	http://www.research.luc.edu/informationpolicies/procedures/copyrightpolicya
Marquette	http://www.marquette.edu/orsp/policies/ippolicy.pdf
New Mexico	http://www.unm.edu/~handbook/E70.html
Oklahoma State	http://home.okstate.edu/policy.nsf/483c0b76d56e01c2862562b100059b03/37f5475bbb9a4e5f862562d800604ad9!OpenDocument
Penn State	http://guru.psu.edu/policies/RA11.html and http://guru.psu.edu/policies/RA17.html and http://grants.psu.edu/PSU/res/ip.htm
Purdue University	http://www.purdue.edu/oop/policies/pages/teach_res_outreach/b_10_print.html
Rice	http://professor.rice.edu/professor/Patent_and_Software_Policies.asp and http://fachandbook.rice.edu/emplibary/fac_handbook.pdf
Southern Mississippi	http://www.usm.edu/pubs/fachbook/Faculty_Handbook_9_2_04.pdf
Stanford University	http://www.stanford.edu/dept/DoR/rph/Chpt5.html
The University of Maryland	http://www.umd.edu/

University	URL
Tufts University	http://www.tufts.edu/tccs/p-intellectual.html
UC Berkeley	http://otl.berkeley.edu/inventor/uccopyright.php
University of Alabama	http://facultysenate.ua.edu/handbook/Append-h.html ; http://facultysenate.ua.edu/handbook/append-g.html
University of Connecticut	http://www.policy.uconn.edu/
University of Denver	http://www.du.edu/intellectualproperty/
University of Florida	http://rgp.ufl.edu/pdf/otl/ipp.pdf
University of Georgia	http://www.ovpr.uga.edu/rpph/rph_chp2.html
University of Hawaii at Manoa	http://www.svpa.hawaii.edu/svpa/ar/arch3.pdf
U of Illinois at Urbana-Champaign	http://www.uillinois.edu/trustees/rules.html
University of Iowa	http://www.uiowa.edu/~our/opmanual/v/30.htm
University of Missouri-Columbia	http://www.umsystem.edu/ums/departments/gc/rules/business/100/030.shtml
University of Notre Dame	http://www.nd.edu/
University of Pennsylvania	http://www.upenn.edu/assoc-provost/handbook/v_e.html ; http://www.upenn.edu/almanac/volumes/v51/n22/pdf_n22/patent_policy.pdf
University of Rhode Island	http://www.uri.edu/facsen/Appendix_H.html ; http://www.uri.edu/facsen/CHAPTER_1004.html and http://www.uri.edu/facsen/CHAPTER_504.html
University of Rochester	http://www.rochester.edu/provost/Faculty_Handbook_Master_for_Printing_082404.pdf ; http://www.rochester.edu/ott/policies/#general
Utah	http://www.admin.utah.edu/ppmanual/6/6-7.html
Utah State	http://www.usu.edu/hr/policies/327.htm
VCU	http://www.pubinfo.vcu.edu/wss/ipp/ipp.pdf
Virginia Polytechnic	http://www.policies.vt.edu/13000.html
Washington University	http://www.wustl.edu/policies/intelprop.html ; http://www.wustl.edu/policies/intelpropfaq.html

Appendix B
Policy Coding Framework

University
URL
Date Accessed
Name of document

1. On-line policy
2. U claims some faculty works
3. U claims works created with any university resources
4. U claims works created with substantial resources
5. U defines substantial resources
6. U disclaims ownership of traditional scholarly works
7. U lists exceptions to (6.)
8. U includes courseware or distance learning materials in definition of scholarly works
9. U cedes control of syllabi, tests, notes, etc. to profs
10. U includes materials posted on the Web in (9.)
11. U says it's committed to academic freedom or free dissemination of ideas
12. U claims ownership using academic freedom as basis
13. U distinguishes computer programs from other works
14. U has separate policy dealing with software
15. U treats computer programs under patent policy
16. U has separate policy or section for distance learning courses or courseware
17. U claims ownership of courseware or distance learning materials
18. U claims works produced due to specific, direct, or written job assignment or duties
19. U claims works produced by persons hired to produce such works
20. U claims commissioned works
21. U claims works for hire pursuant to Copyright Law or developed within scope of employment
22. U considers work for hire to be extra work assigned to prof
23. U requires work for hire agreement to be signed before work begins
24. U claims joint ownership
25. U claims royalty-free license
26. U offers to share a percentage of royalties
27. Provisions for allowing profs to control use of a work within U
28. Policy allows profs to revise their works
29. Policy grants authors right to continued use of work for nonprofit academic purposes
30. Policy grants authors the right to make derivative works
31. Policy gives profs unilateral control of work licensed for use outside univ
32. Copyright ownership transfer to prof if commercialization or publication does not take place w/i period of time
33. Even if ownership transfers to prof pursuant to (32.), U retains license or right to derivative work
34. Committee decides ownership
35. Binding arbitration
36. Administration settles disputes
37. Agreement signed by prof
38. Agreement signed by univ
39. Policy provides provisions for enforcement
40. Policy contains undefined terms, inconsistencies or vague language

Note. Items are coded yes, no, or not mentioned