



A RESOLUTION ON GW COURSE INTELLECTUAL PROPERTY AND DIGITAL RECORDING (21/9)

WHEREAS, The university Copyright Policy¹ states that “Under federal copyright law, copyright protection exists for ‘original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.’ The copyright exists from the moment the work is fixed in a tangible medium of expression”; and

WHEREAS, the university Copyright Policy further specifically recognizes that “lectures, audio and video recordings, and other lecture-based material” (hereafter labelled “Intellectual Property”) “may be subject to copyright protection”; and

WHEREAS, beginning Monday, March 23, 2020, the university moved most Spring 2020 GW classes online for the duration of the Spring semester; and

WHEREAS, on July 27, 2020, the university announced that nearly all Fall 2020 classes would be held online; and

WHEREAS, faculty members have a direct interest in all course-related intellectual property and associated derivative works (such as new courses which include such property, in part or in whole), including intellectual property associated with online courses and their derivative works and courses for which there is a “virtual presence” and/or digital footprint associated with the university’s Spring 2020 semester, Fall 2020 semester, and any subsequent semesters; and

WHEREAS, the university Copyright Policy further states that:

“Generally, when the Faculty, Librarians or Students, in pursuit of their normal scholarly, professional, or academic responsibilities, including normal use of the university's physical facilities, by their own initiative create copyrightable works, the copyright and any resulting royalties vest in the Faculty, Librarian, or Student as author of the copyrighted work.” (emphasis added);

“The university makes no claim of ownership of copyright in textbooks or other instructional materials in any medium, including electronic and multimedia materials, unless said materials have been made with Substantial Use of university resources or qualify as Works Made for Hire” (emphasis added)²; and

WHEREAS, the university Copyright Policy defines “Substantial Use” as: “that use of university laboratory, studio, audio, audiovisual, video, television, broadcast, computer, computational or other facilities, resources and Staff or Students which...entails a Faculty member's or Librarian's use of such resources that are not ordinarily available to all or virtually all Faculty members with comparable status in the same school or department or to all or virtually all similarly situated Librarians.” (emphasis added); and

WHEREAS, the university Copyright Policy defines faculty Work Made for Hire as “a specially commissioned work created by a Faculty member or Librarian within the scope of employment, as set forth in a specific written agreement between the Faculty member or Librarian and the university”; and

WHEREAS, the university Copyright Policy further states: “[A] transfer of copyright ownership by a faculty author to the university shall not be required under this *Works Made with Substantial Use of University Resources and Transfer of Rights to University* if a work has been created with Substantial Use of university resources in accordance with the request or direction of the university or with the approval referenced in Policy Statement on Prior Approval, unless the faculty author and the university have entered into a specific written agreement governing copyright ownership with respect to the work” (emphasis added); and

WHEREAS, in the absence of a formal agreement to the contrary, recordings of course-related intellectual property do not fall under the “Substantial Use” or “Works Made for Hire” provisions (as identified above) of the university’s Copyright Policy;

NOW, THEREFORE, BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY THAT

- (1) According to the university’s Copyright Policy, in the absence of a formal agreement with the individual Faculty member, the copyright to all intellectual property (as defined above, including all audio and video recordings of class-related sessions and activities) and any other course materials including the syllabus and the organization or arrangement of a course on a website, Blackboard, or other course management system) created by the Faculty member or members, including previously stored course-related intellectual property for which there is a “digital footprint” (including but not limited to prior courses stored on Blackboard or any other platform), vests exclusively and solely with the Faculty author(s) of said intellectual property, including the right to determine use of the property in contemporaneous or subsequent offerings of the same or different courses; and
- (2) The mere fact that a recorded lecture or other course material, including the syllabus and organization of a course, is stored on a university resource (such as a Blackboard server), or was authored using resources ordinarily available to all or virtually all Faculty members with comparable status in the same school or department, does not entitle the university to lay claim to copyright of said intellectual property in the absence of a formal agreement with the faculty owner under the “Works Made for Hire” or “Substantial Use” provisions of the university Copyright Policy; and

- (3) All members of the university community are reminded that copyright protection restricts use of course-based intellectual property (including recordings) without the explicit permission of the faculty owner(s); and
- (4) No university administrative official may compel any faculty intellectual property owner to complete a formal “Work for Hire” agreement regarding course-related intellectual property; nor may any university officials make appointments of contract faculty conditional on work for hire arrangements; nor may any tenure, promotion, or merit considerations be made contingent on work for hire arrangements;
- (5) Faculty are encouraged to facilitate authorized use of course materials for educational purposes by their students, and with that principle in mind, to include in their syllabi clear guidance as to what the faculty member considers to constitute permissible or impermissible use of course materials of which they are the intellectual property owner, including recordings of class sessions featuring instruction authored by the faculty; and
- (6) In the Spring semester of 2021, the Senate shall commission a review of any subsequent modifications needed.

Senate Committee on Appointments, Salary, and Promotion Policies
Senate Committee on Educational Policy and Technology
Senate Committee on Professional Ethics and Academic Freedom
August 4, 2020

Adopted by the Faculty Senate
August 14, 2020

¹<https://compliance.gwu.edu/copyright>

²The university Copyright Policy also provides for works that are created within the scope of a Sponsored Project. These works are not germane to this Resolution.

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Over the past several years, at least three Standing Committees of the GW Faculty Senate (Educational Policy & Technology; Appointments, Salary, and Promotion Policy; Professional Ethics and Academic Freedom) have conducted independent discussions regarding the ownership and control of materials generated by faculty members of their own initiative and incorporated into GW course presentations. Such material is often included as one component of the broader class of materials known as “intellectual property”, the legal rights to which are prescribed under U.S. law. Of particular interest in these discussions are two types of materials: (1) those that employ university facilities or personnel (such as instructional designers) in their creation, and (2) those that are digitally recorded on or presented using university resources (including “course management systems” such as Blackboard).

In extensive discussions with the Senate Educational Policy Committee, former GW Provost Forrest Maltzman articulated the GW administration’s view that all intellectual property questions associated with GW courses fall under the university’s Copyright Policy, which is available for download at <https://compliance.gwu.edu/copyright>. Interested readers are encouraged to familiarize themselves with this Policy.

Of particular importance, the “Introduction” section of the GW Copyright Policy notes that “Generally, when the Faculty, Librarians or Students, in pursuit of their normal scholarly, professional, or academic responsibilities, including normal use of the university’s physical facilities, by their own initiative create copyrightable works, the copyright and any resulting royalties vest in the Faculty, Librarian, or Student as author of the copyrighted work.” The Introduction goes on to note that “For Faculty and Librarians, the university only claims ownership of the copyright if the work qualifies as a Work Made for Hire, or if the work’s creation required Substantial Use of university resources.” (The Copyright Policy explicitly defines the term “Faculty” as “All those individuals listed in Part I, Section B of the Faculty Code”: i.e., “full-time faculty members with the title of university professor, professor, associate professor, assistant professor, and instructor who are tenured or tenure-track, and non-tenure-track full-time faculty members who are on a renewable contract, do not hold either a regular or tenured appointment at another university, have a nine or twelve month appointment and who have contractual responsibilities for all of the following: research, teaching, and service.”)

This introductory paragraph of the Copyright Policy (the intent of which is also reflected in Section 4.6 of the Faculty Handbook) conveys the default provision that copyright of intellectual property presented in a Faculty member’s lectures vests exclusively with the Faculty member unless the work qualifies as a “Work Made for Hire” or if the work required (or requires continued) “substantial use of university resources.” (The university Copyright Policy also provides for works that are created within the scope of a Sponsored Project. These works are not germane to this Resolution.)

Work Made for Hire

The university has found it convenient to engage in specific “Work Made for Hire” contracts with specific Faculty members to promote objectives of mutual benefit. With regard to GW courses, this occurs most commonly in special contracts to develop the materials for and create the presentation

of online courses, and may include a provision for conducting a certain number of instances of the online course.

The ownership and control rights of any intellectual material included in the course are typically explicitly defined in the Work Made for Hire contract, and are therefore rarely in dispute. Concern has been raised, however, that some Faculty members have felt pressured or compelled by university administrators to engage in Work for Hire agreements that abrogate their default intellectual property rights under the university Copyright Policy. Resolving Clause 4 of the proposed Resolution speaks directly to this concern.

Substantial Use of University Resources

The university Copyright Policy states that “Ownership of copyright in materials created by Faculty, Librarians, Staff or Students with Substantial Use of university resources shall be transferred by the author(s) to the university in accordance with *Transfer of Rights to University*, unless the university agrees, in writing, to waive or alter its rights. Notwithstanding the foregoing sentence, a transfer of copyright ownership by a faculty author to the university shall not be required under this *Works Made with Substantial Use of University Resources* and *Transfer of Rights to University* if a work has been created with Substantial Use of university resources in accordance with the request or direction of the university or with the approval referenced in *Policy Statement on Prior Approval*, unless the faculty author and the university have entered into a specific written agreement governing copyright ownership with respect to the work.”

In essence, this provision of the university Copyright Policy states that, even if a “work” (including a lecture or class presentation) has been created with “substantial use of university resources” (as formally defined in the Copyright Policy), a transfer of ownership of the property to the university is not required if it was created at the request of the university.

This provision is particularly important in the context of the COVID-motivated mandate by the university administration that all Spring 2020 GW courses move to an online instance beginning on March 23, 2020. Resolving Clause 1 of the proposed Resolution specifies that the copyright to any such material placed online remains exclusively vested in the Faculty member.

Additionally, because on July 27, 2020, the university announced that nearly all Fall 2020 classes would be held online, Resolving Clause 6 provides for a review of the copyright protection provisions in the Spring of 2021.

In Summary

- Resolving Clause 1 establishes the default principle that the copyright to a particular Faculty member’s course-related intellectual property which is placed online vests exclusively with that Faculty member;
- Resolving Clause 2 underscores the principle that merely storing Faculty intellectual property on a university course management system such as Blackboard does not trigger the “substantial use” provisions of the Copyright Policy (and the concomitant restriction on Faculty intellectual property rights);

- Resolving Clause 3 reminds the university community of the intellectual property protections provided by the university's Copyright Policy and by US Law;
- Resolving Clause 4 speaks to the prohibition on university administrators of compelling a Faculty member to engage in a Work for Hire arrangement which would abrogate or restrict a Faculty member's intellectual property rights;
- Resolving Clause 5 acknowledges that some Faculty members may wish to surrender some of their intellectual property rights with respect to course materials, and that the course syllabus provides an appropriate vehicle for specifying the conditions under which such rights are surrendered;
- Resolving Clause 6 recognizes that the present Resolution is inspired by the exigencies imposed by COVID-19, and specifies a review timeframe for the Resolution.

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