

Chapter Six

Intellectual Property

The instinct of ownership is fundamental in man's nature.

—WILLIAM JAMES

The professoriate, on the whole, is a creative group, and many of us belong to it because we enjoy engaging in high-level mental processes that have tangible results. As academics, we generally like to challenge traditional ideals and relationships, come up with new methods, discover additional knowledge, interpret information, and so forth. We like to see concrete results from these processes; thus many of us like to make things, such as books, articles, plays, paintings, music, software, formulas, chemicals, tools, devices, programs, and so forth. We often are drawn to our profession, then, because of the potential it offers for intellectual engagement and its outlets for creative expression. Being a thinker and a maker is a natural part of faculty work. One thing many of us “make” is courses, and when we teach online, we develop a wide range of products that represent our intellectual property.

About Intellectual Property

Our right of ownership of our intellectual property is known as copyright,¹ which is the ability to “reproduce the copyrighted work in any format; to prepare derivative works; to distribute copies of copyrighted work to the public by sale, rent, lease or gift; to perform the copyrighted work publicly; and to display the copyrighted work publicly.”² We are considered to own the work at its creation, once such works are “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.”³ We can sell or rent this right to others, and we can receive compensation for that use (i.e., an author might assign copyright to a publisher in exchange for royalties). Others, however, cannot take our original expressions without permission, nor can we take theirs, as doing so would be copyright infringement, which is a legal violation of

a copyright holder's exclusive rights.⁴ Copyright violations can take many forms, from making and distributing unauthorized copies of another's work to borrowing significant portions of another person's work in the creation of a new work.

Even before the advent of early forms of communications technology, access to creative expression was limited, and ownership of that expression was relatively clear. To have access to a story, one had to hear it from the storyteller, while the story was being spun. To hear music, one had to listen to the person making it in the moment. To see art, one had to watch it being made or to see it being displayed in a physical location. Internet technology, in particular, has provided us with access to many kinds of media through which to disseminate creative expression. It has made art, music, and literature much more accessible and ubiquitous. Today, such artistic products are everywhere, and they are being consumed to a greater extent than ever before, which, in a sense, makes them a little less rare and sacred. It has also removed us from the source of the creative expression. Sole ownership is much less clear. In consequence, it is more difficult for copyright holders whose works can be distributed electronically to enforce their copyrights.

Changes to Faculty Experience with Intellectual Property When Teaching Online

Most faculty are both consumers and owners of copyrighted materials. When teaching onsite, we have privileges, because our functions as educators allow us to use copyrighted materials under certain circumstances. We own our ideas, which are not always in a tangible form, and we share them with students as we deem appropriate. We exert our ownership over most of the instructional processes and products. When we teach online, however, it is no longer necessary for students to participate in the act of teaching in the moment and at the site in which it occurs; they no longer experience the creative expression directly during the process of its creation. Our online teaching materials, products, and processes necessarily are more explicit, more tangible, and more removed from the source, that is, from us. Online learning technologies have "shaken the very foundations of copyright and patent law and . . . promise to affect notions of intellectual-property ownership altogether."⁵ These changes have implications for our roles and responsibilities as teachers.

USE OF EXISTING COPYRIGHTED MATERIALS

Almost all faculty members use someone else's copyrighted materials when teaching a class. We use newspaper clippings, scholarly articles, essays, photo-

graphs, and so forth. At times, we create course readers or course packs.⁶ We are allowed to use works from others in our own teaching under the doctrine known as fair use. Fair use is part of copyright law and is intended to provide flexibility in extending other people's work to users and new creators. For our purposes, fair use grants an exception to copyright infringement for materials for educational use.⁷ It does not grant a blanket exception, however, and whether such usage is protected is based on four statutory factors:⁸

1. *The purpose and character of the use.* Purposes that lend themselves to falling under fair use include educational, research, scholarly, critical, and nonprofit purposes.
2. *The nature of the copyrighted work.* In particular, this factor relates to whether the work is published or not. Published works tend to come under the designation of fair use (although it is possible for unpublished works to fall into this category). Likewise, borrowing from factual works is more likely to be considered fair use than borrowing from creative works.
3. *The amount and sustainability of the portion used in relation to the copyrighted work as a whole.* Using a smaller amount of a source work is more likely to fall under fair use than using a larger amount; but the amount is proportional. Thus three hundred words from a scholarly article may be more likely to be deemed fair use than three hundred words from a poem. While it is possible to use all of a source work, a lesser quantity is more likely to fall under fair use.
4. *The effect of the use on the potential market for or value of the copyrighted work.* While this factor can be challenging (or even impossible) to weigh, a good rule of thumb is to consider whether the use would substitute for the sale of the product. If so, it probably argues against fair use.

These factors provide us with some guidance, but they are flexible. While flexibility can be an asset, it can also be a challenge to those of us seeking to determine whether our proposed use of source material will or will not fall under fair use. The law is unpredictable on this issue. Anyone who attempts to determine whether something falls within the guidelines of fair use is simply making an educated guess, although clearly some guesses are more educated than others (e.g., a university lawyer would be a good contact for questions). Fortunately, copyright holders to date have been relatively tolerant of the limited use of their copyrighted materials without prior permission or payment of royalties, at least to the extent a

faculty member deems necessary for teaching a class. Few copyright holders have taken issue with faculty using copyrighted material in onsite courses, perhaps due to the fact that copyright infringements that take place in a traditional classroom are exceedingly difficult to prove.

Nonetheless, fair use becomes an even murkier concept for those of us who choose to teach online. When we make copies available in an online environment (i.e., over the Internet), we do not have the same capacity to control the distribution of these materials. It is much easier and cheaper to disseminate information to large audiences over the Internet, particularly as student participation in online courses has grown. A real consideration is what counts as fair use in MOOCs, and many instructors for these courses are choosing to use open resources. In addition, online learning is much more visible, so copyright infringement is easier to identify. We may have large audiences for our online courses, which makes sharing copyrighted material simpler, and most students are able to copy and print these items in their own homes, making the issue even more problematic. Because of this, students, or, in the case of open courses, other individuals, can access as much (or as little) of a course—and, therefore, its copyrighted materials—as they want.⁹ Thus the conditions of fair use are challenged in myriad ways in an online teaching environment.

The Copyright Act, which governs the fair use of materials when teaching onsite, is somewhat limited in setting forth what is permissible when technology allows greater access to and use of copyrighted items. For that reason, in 1996 CONFU (Conference on Fair Use)—a group of educators, attorneys, publishers, librarians, and others convened by the Clinton administration—developed a set of fair-use guidelines for educational multimedia, suggesting that faculty and students may use approximately 10% of another's works for educational use.¹⁰ In addition, the Technology, Education, and Copyright Harmonization (TEACH) Act was established in 2002 as an amendment to section 110(2) of the Copyright Act. It has sought to expand educators' rights to use works in online learning, striving to make these rights more congruent with onsite teaching. The TEACH Act has been controversial, however, as some educators have suggested that it still leaves a considerable gap between onsite and online teaching, is overly complicated, and is difficult to interpret. Moreover, this act has been deemed to be more restrictive than the fair-use principle. Will Cross provides useful and accessible information about the TEACH Act.



Making Space for the Giants

Copyright, Technology,
and Online Instruction

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As Isaac Newton stated, “If I have seen further it is by standing on the shoulders of giants.” No one understands Newton’s famous axiom better than an instructor. For faculty members working in the classroom, instruction would be impossible without making reference to works that came before. From general-education requirements to graduate seminars, the daily work of teaching is built around the giants of the past. Foundational works are introduced, recent scholarship is evaluated, and this morning’s news is presented to spark class discussion.

When copyright threatens an instructor’s ability to share the text, the journal, and the newspaper, however, this spark could be extinguished. Negotiating copyright permission can be time-consuming and costly, and it would be perverse indeed if copyright, designed to “promote the progress of science and the useful arts” (Article I of the US Constitution), shut down the very instruction that encourages learning and creation.

To alleviate this tension between copyright and classroom instruction, US copyright law has traditionally carved out space for the use of works in the classroom without explicit permission. For example, the established practice of displaying images, performing plays, and showing films in the classroom is protected by the face-to-face teaching exception embodied in section 110(1) of the Copyright Act. Teaching activities, including “making multiple copies for classroom use,” are similarly privileged by fair use, a broad copyright exception for socially valuable instances such as instruction.

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Taking Instruction to New Heights: The TEACH Act and Online Instruction

The principle that instructors are free to incorporate copyrighted works into their classroom instruction without seeking permission was translated to the digital-classroom context by Congress with the passage of the Technology, Education, and Copyright Harmonization (TEACH) Act of 2002. Although the TEACH Act reflects this principle, it also includes several additional rules designed to replicate the classroom context in the online environment. It accomplishes this with two sets of specific responsibilities: one aimed at instructors, and one at the institutions where they teach.

THE INSTITUTION'S RESPONSIBILITIES

First, the TEACH Act specifies the types of institutions to which it applies and the way these institutions must behave to qualify for this copyright exception. Unlike many general copyright exceptions, such as fair use, TEACH is limited to “government bodies or accredited nonprofit educational institutions.”

Institutions are also required to provide significant information about copyright to their stakeholders. This includes generating a written policy on copyright for distance education; providing information that promotes compliance by students, faculty, and staff; and including written notice to students that the works being shared via TEACH are protected by copyright.

To qualify for TEACH, institutions must also provide several technological safeguards that limit sharing to the virtual classroom. To the extent “technologically feasible,” institutions must restrict access exclusively to enrolled students through password protection or similar measures. Institutions must also establish controls on the retention of course materials and their further dissemination beyond the end of the class session. As with limiting access, these controls need not be airtight; they must only “reasonably prevent” retention and further dissemination of copyrighted items.

Checklist—Institutions Must:

- ✓ Be a government body or accredited nonprofit educational institution
- ✓ Provide a copyright policy

- ✓ Provide copyright information and a copyright notice to users
- ✓ Limit access to enrolled students
- ✓ Use technological controls on retention and further dissemination

THE INSTRUCTOR'S RESPONSIBILITIES

Along with these institutional requirements, the TEACH Act also requires individual instructors who rely on this exception to behave in a manner that replicates their role in the physical classroom.

First, instructors relying on TEACH must provide supervision of and oversight for all materials shared. Performances and displays must be “made by, at the direction of, or under the actual supervision” of the instructor for the course. Similarly, the materials must be “an integral part of the class session offered as a regular part of the systematic mediated instructional activities” and be “directly related and of material assistance to the teaching content of the transmission.” Further, all materials must be used to directly support the pedagogical work of the instructor, not simply for the entertainment of the students.

TEACH also specifies what materials may and may not be used. All nondramatic literary and musical works qualify for this exception, but the use of dramatic and audiovisual works must not exceed “reasonable and limited portions.” TEACH does not define what a “reasonable” portion is, but in general the reasonableness will be evaluated in light of the instructor’s pedagogical purpose. In other words, how much does the instructor reasonably need to use in order to make a point or introduce the concept to the students? Regardless of the type of work, instructors are permitted to display work in an amount comparable to that which is typically displayed during a live classroom session.

Instructors are prohibited from using materials that were unlawfully acquired, or materials that were produced or marketed primarily for performance or display, as part of the mediated instructional activities transmitted via digital networks.

Checklist—Instructors Must:

- ✓ Make, direct, or supervise all performances or displays
- ✓ Ensure that all materials are an integral part of systematic mediated instruction

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- ✓ Ensure that all materials are directly related and of material assistance to a course
- ✓ Use only nondramatic works or “reasonable” portions of dramatic and audiovisual works
- ✓ Avoid unlawful copies and work designed or sold specifically for online instruction

Stretching beyond the Shoulders: The Limits of TEACH and the Importance of Fair Use

The TEACH Act is an important component of online instruction, but it has several significant limitations. First, where many copyright exceptions concisely describe a general principle, TEACH is complex, technical, and rigid. It is more than five times as long as the text of the equivalent face-to-face teaching exception discussed above. It also introduces several limitations that go beyond merely recreating the confines of the classroom, such as the act’s requirement for using just “reasonable, limited portions” of copyrighted materials and its application only to accredited institutions.

Second, TEACH is designed to support performance and display, but the exception does not encompass related instructional practices, such as electronic reserves or the creation of online teaching tools and resources. An instructor working online must be familiar with TEACH but should also be comfortable with related copyright exceptions—particularly fair use—that may apply to all aspects of course design, lectures, class projects, and related works. Resources such as the “Fair use codes & best practices” web page, hosted by American University’s Center for Media & Social Impact, provide excellent guidance for instructors as they design and present online courses.

Finally, copyright exceptions like those in TEACH stand on the shoulders of related exceptions that support instruction. Copyright scholars have written about the way that particular statutes such as TEACH exert a “gravitational pull” on a court’s evaluation of good-faith behavior. Engaging in the activities that TEACH is designed to support strengthens related exceptions, such as fair use, when instruction is done in good faith. An instructor does not have to choose which exception he or she relies on; the entire panoply of copyright exceptions work in harmony to make space for the socially valuable work that instructors do.

TEACH is an important part of the picture, but in a world of MOOCs, streaming media, and online universities, the 2002 law is best understood as one part of the infrastructure supporting teachers and their students as they reach toward the horizons of online instruction.

Further Reading

American University, Center for Media & Social Impact. Fair use codes & best practices, available at www.cmsimpact.org/fair-use/best-practices/fair-use-codes-best-practices.

Crews, K. (2012). *Copyright law for librarians and educators* (3rd edition). Chicago: American Library Association.

Duke University. TEACH Act guidelines, available at <http://blogs.library.duke.edu/scholcomm/files/2007/12/copyright-review-flow-chart-v3x.pdf>.

Hobbs, R. (2010). *Copyright clarity: How fair use supports digital learning*. Thousand Oaks, CA: Corwin.

North Carolina State University, Copyright and Digital Scholarship Center. CDSC tools for authors and instructors, available at www.lib.ncsu.edu/cdsc/resources/tools.

PATTERNS OF OWNERSHIP

In addition to using items from others when teaching courses, we also create our own materials. When we teach onsite, many of our products and processes are not subject to copyright. Lectures or group activities typically are not in a tangible form and thus are not copyrightable. We may, however, create materials that fall under this category. In most cases, the person who develops the work and fixes it in a tangible medium is the owner of the material, and copyright is thought to convey who conceived of the work.

The 1976 Copyright Act, however, provides an ownership exception for those individuals working within a company or an institution. If the work is developed by an employee during the regular scope of his or her employment, that person's employer is deemed the author and thus the copyright owner. The product is considered work-for-hire,¹¹ and the employer therefore owns the work. What this means is that many faculty members are subject to work-for-hire agreements. In short, when full-time faculty members develop work at a university as part of their employment, it could be considered the university's property.

This ownership exception does not always apply, however. Some institutions allow a "teacher exception" to work-for-hire. Moreover, there are factors that determine whether the works that were created would be deemed work-for-hire. In

particular, in *Community for Creative Non-Violence v. Reid*, which was decided in 1989, the US Supreme Court identified factors that make up an employer/employee relationship:¹²

1. *Control by the employer over the work.* For example, the employer determines how the work is done, has the work done at the employer's location, and provides equipment or other means to create the work.
2. *Control by the employer over the employee.* For example, the employer controls the employee's schedule in creating the work, has the right to have the employee perform other assignments, determines the method of payment, or has the right to hire the employee's assistants.
3. *Status and conduct of the employer.* For example, the employer is in business to produce such works, provides the employee with benefits, or withholds tax from the employee's payment.

Most of us do work that is not under the direct control of our employers. We do it off the clock, and we do it on our own equipment. Thus our products often fall into a grey area.

In addition, under the Copyright Act, faculty may retain ownership of "commissioned" works if the work is done through additional or outside compensation and does not take place during normal employment hours; it is then considered "independently contracted" and the employee may still be deemed to own the copyright. Part-time employees are not generally subject to work-for-hire strictures and thereby tend to own their own creative work.¹³

In an exception to the exception, however, if an employee is deemed an independent contractor, the employing organization often specifies that it holds the copyright to the materials being created. In addition, in some for-profit institutions, faculty are employed under work-for-hire agreements, which means that the institution controls the course content and any new content that may be developed belongs to the institution.

In yet another twist, even if we as teachers fall under work-for-hire, an institution may choose to share the copyright for a work produced by a faculty member with that person.¹⁴ While owning copyright as individuals is the clearest form of ownership, it is possible to hold joint ownership, which is what occurs when two or more authors contribute copyrightable materials that may be combined into a single work. In this situation, each contributor shares ownership to the entire work, not just to what he or she created, which, in turn, means that each contributor can exercise any of the rights of copyright, such as transferring or licensing the work.

There is wide variety in how they go about having joint copyright ownership, from licensing the whole of the work to the institution, or only part to the institution, or all to the faculty member.

CLEAR. AS. MUD.

Fortunately, even for the course products we develop teaching onsite that fall into this technically copyrightable category, there are few instances of universities taking action in order to assert ownership of such properties, very likely because they are deemed to have little value. Unfortunately, when we teach online, the game changes. Many of our recorded creative activities and outlets, such as course materials and presentations,¹⁵ multimedia, video, photos, and music, are products that may be copyrighted.¹⁶ Lectures that once were intangible are now recorded and thus become tangible. Moreover, there is an increasing sense that this intellectual property may have some monetary value. Another issue is that faculty who teach online often work with educational technologists to create online courses. The creation of course materials and processes becomes a joint endeavor, and such products subject to joint ownership, which complicates the copyright. In addition, when an institution has invested significant financial resources to develop a course, they have more of a stake in it. For instance, faculty who are participating in MOOCs often work in teams with other faculty, research assistants, graphic designers, web designers, and so forth. Anyone involved in the creation of the course may have an ownership claim for it. There is also the accompanying issue of what stake MOOC providers have in course products or processes. Questions about the ownership of online courses are only beginning to be asked, and faculty who create original materials for them are facing a new frontier. Neal Hutchens describes some of the implications of faculty ownership of intellectual property in online courses under different ownership policies (see p. 142).

AVAILABILITY OF OUR PRODUCTS

When we teach onsite, we control the dissemination of our tangible course products. We determine what to release, when to release it, and to whom to release it. In short, we exercise a substantial degree of authority over our course materials and who sees them. While there have been some threats to faculty ownership of the materials we create and use during onsite teaching, such as companies that send in employees posing as students who take lecture notes and then sell them, for the most part our materials are not readily accessible to others. Thus we do not risk



Who Owns Online Course Materials?

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Variation characterizes the ownership standards adopted by colleges and universities regarding the intellectual property (e.g., syllabi) developed for online courses.¹ Some institutions designate copyright for online course materials as residing with faculty. Others assert ownership over such materials, adhering to the work-for-hire doctrine. A college or university may lack a clear policy, leaving the issue of ownership unclear. Even within the same institution, particular factors may affect ownership, such as one's status as faculty or staff or whether a person received additional compensation or resources to develop a course. This sidebar considers two different intellectual-property policies and the resulting implications regarding the ownership of online course materials.

Teacher or Academic Exception to Work-for-Hire

Legal ambiguity exists over whether the 1976 Copyright Act eliminated a judicially recognized teacher exception to the work-for-hire doctrine.² Previously, the courts had largely viewed faculty as possessing copyright over the intellectual property they produced. Despite the legal ambiguity under current copyright law, a number of colleges and universities have policies in place that recognize the traditional teacher or academic exception to work-for-hire.

The University of Minnesota's copyright policy and its accompanying guidance illustrate how this university maintains the traditional teacher or academic exception to work-for-hire, including in relation to online courses.³ Under the institution's copyright standards, the format for a course (i.e., meeting online or in a physical setting) does not determine

ownership. Whatever the instructional context, the university recognizes an exception to work-for-hire for its faculty members. In many instances the institution permits intellectual-property rights for academic work, including course materials, to reside with faculty instead of with the university.

While faculty members at the University of Minnesota own much of the intellectual property they produce, the university reserves the right to assert institutional ownership for course materials created under certain conditions. According to university policy, a faculty member does not hold copyright in “directed works.” To qualify as a directed work, (1) the university must make a specific request for a faculty member to produce the materials, (2) a project must involve the use of substantial resources beyond those usually afforded to faculty, and (3) an agreement must exist regarding the directed status of the work. As these standards show, the particular circumstances surrounding the development of online course materials may affect ownership, even if an institution recognizes a teacher exception to work-for-hire.

Unlike the situation for its faculty members, and in alignment with usual copyright standards under work-for-hire, the University of Minnesota retains ownership of intellectual property, including course materials, produced by nonfaculty employees.

Joint Ownership of Online Course Materials

In contrast to what the University of Minnesota does, the intellectual property policy of the University of Louisiana System illustrates an alternative approach, that of joint ownership.⁴ This system-wide policy gives a faculty member’s home institution a nonexclusive, permanent, royalty-free license for materials developed for any courses, including online ones. Under the policy, universities in the system retain the right to use these materials, even if a faculty member leaves an institution. While not adhering to work-for-hire, the system’s policy demonstrates a deviation from the teacher or academic exception for faculty.

Ownership Considerations with Online Course Materials

Several points come to mind when considering the ownership question in relation to online course materials:

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- Given the differences in institutional policies, familiarize yourself with the copyright standards specific to your college or university before developing a course.
- If a college or university lacks a clear policy or standards, a written agreement between the instructor and the institution can specify ownership rights.
- Remember that one's employment status can affect ownership. Even if you work at an institution that recognizes a teacher or academic exception to work-for-hire, these standards may not apply to clinical faculty or individuals with administrative appointments.
- Employees covered by a teacher or academic exception to work-for-hire may still not possess sole ownership rights to online course materials in all instances. Especially if a faculty member receives either additional compensation or substantial institutional assistance beyond that normally provided for course development, then a college or university may claim sole or joint copyright.

Notes

1. See Blanchard (2010).
2. See *Hays v. Sony Corporation of America* (1988).
3. See University of Minnesota (2007, 2008).
4. See University of Louisiana System (2012).

much in the way of losing intellectual property rights for our onsite teaching materials. When we teach online, however, the situation changes, particularly if we teach a course that is open or has open components. Others can access and use our materials at any time. If they do so without attribution, they may have committed plagiarism. If they use large amounts of our content, they may have infringed on our copyright.¹⁷

Strategies for Being Mindful of Intellectual Property Issues

Many ownership issues accompany teaching online, from using materials that others have developed, to owning our own materials, to making our materials available for others to use. Chad Tindol, director of risk management for the University of Alabama System, provides some general advice for online college teachers regarding questions of intellectual property.



(Photo credit: Zachary Riggins,
University Relations,
University of Alabama)

Advice for Navigating Ownership Issues

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With so many legal issues, what is an instructor to do? As a basic premise, do not expect an easy answer to most legal questions. Notwithstanding attorneys' fondness for sports analogies, the law rarely declares a clear winner, at least before a full contest. Instead, the law balances the interests at stake—creators versus users. A few good basics may be of more benefit than a futile search for the “right” answer:

- *Respect the concept.* A college or university is a place where knowledgeable folks are paid, usually from taxes or tuition, to share intellectual property (IP). It may be our IP, or it may belong to others. It may even belong to the public. Faculty should respect these rights.
- *Know the key sources.* Most IP law is federal, with a basis in the US Constitution. Patent law protects inventions, trademark law identifies goods, and copyright law protects creative works. Look to federal websites for a primer: www.uspto.gov and www.copyright.gov.
- *Know the vocabulary.* IP terms sometime sound common, but they can be loaded with legal meaning. “Fair use” is a great example. Understanding the major terms—including fair use, public domain, the face-to-face exemption—and the TEACH Act is worth the effort. These are the tests that balance owners' rights against legal use.
- *Do not be intimidated by technology.* Fallacies about the effects of a technology on the law are common. The basic legal principles

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should not be affected by the media at issue. The rights of an author to a digital work should be no less, or no more, than those of an author who applies quill to parchment. Moreover, just because something is technologically possible does not mean that it is legal.

- *Be careful with sources.* When looking for IP answers, be aware that there are advocates on both sides. Some believe the world is full of pirates. Others argue that owners are stealing the public's culture via overprotection.
- *Seek help.* At your school, there is probably a legal department, perhaps a copyright office, or a librarian who can help with answers. Many schools have a written copyright and patent policy. Do not be afraid to ask questions of your experts.

IP law deserves consideration as you plan and teach online courses. You should not allow anxiety over the law to overwhelm your goals and plans for your course. Without a basic understanding and some early work, however, you may invite trouble to pay you a later visit.

Beyond these general suggestions, there are several things that faculty should consider when negotiating intellectual property issues that accompany online teaching.

STRATEGY #1: STICK TO THE GUIDELINES

For those who decide to use previously available copyrighted materials, these guidelines may be helpful:¹⁸

- *Limit the amount.* Avoid offering the full content of copyrighted materials, but instead seek to use excerpts when possible.
- *Limit the time.* Avoid having the materials available for the full semester; rather, limit the time period when the materials are accessible for student use.
- *Limit access.* Make materials available only to students enrolled in the course, and protect the contents with a password.¹⁹

STRATEGY #2: USE OPEN EDUCATION RESOURCES WHEN POSSIBLE

Open Education Resources (OER) are free materials that are available under terms that allow sharing, reproduction, and (at times) repurposing. OER content

includes full courses, content modules, course materials, software, and so forth. Using freely available materials may be particularly important for faculty who choose to allow open enrollment and open access to their courses. Moreover, many of the materials we would choose to have students use are free and readily accessible. Having students download these items provides them with useful life skills; using these resources reflects sound economic and pedagogical decisions.²⁰

STRATEGY #3: CHECK OUT INSTITUTIONAL POLICIES

We need to know both whether our institutions consider our products as work-for-hire and what policies they have to govern how copyright is perceived. Learning whether our institutions have specified whether they own our copyrighted materials or whether they share them with us is a first step in understanding our rights.

STRATEGY #4: MAKE CONSCIOUS DECISIONS WHEN LICENSING OUR OWN WORK

While we may choose to follow a traditional copyright route, there are other options. In particular, Creative Commons (CC), founded in 2002 by legal scholar and political activist Larry Lessig, is a nonprofit organization that seeks to build a richer public domain through alternatives to copyright (CC licensing), where the creator can choose which rights to reserve.²¹ In short, authors can make their work more

 Attribution	 Share Alike	 Noncommercial	 No Derivative Works
You let others copy, distribute, display, and perform your copyrighted work — and derivative works based upon it — but only if they give credit the way you request.	You allow others to distribute derivative works only under a license identical to the license that governs your work.	You let others copy, distribute, display, and perform your work — and derivative works based upon it — but for noncommercial purposes only.	You let others copy, distribute, display, and perform only verbatim copies of your work, not derivative works based upon it.

Figure 6.1. Creative Commons common licensing terms



Figure 6.2. The Copyleft symbol

accessible through CC while retaining some rights we (as the authors) deem appropriate. CC offers an alternative to a conventional copyright and thus has the potential to provide faculty with sources that are freely available for use.²² Figure 6.1 lists the CC licensing terms.²³

A licensing term similar to CC's Share Alike is Copyleft (figure 6.2). By using the Copyleft symbol, creators agree to give up rights to their creations, and anyone using these creations in their own work also agrees to give up their rights.

Whether we choose a traditional copyright, Creative Commons licensing, or Copyleft, it is important to protect our rights to our online materials. We should clearly display which licensing agreement we have selected, which will indicate the terms and conditions of the chosen agreement.

Conclusion

Faculty who are teaching online are facing new issues and questions when it comes to intellectual property, created in part from the fact that technology mediates between humans and their products. While protecting ownership of our intellectual property is important, we still should keep in mind that the goal is to provide students with useful materials to help them experience new ideas and receive new information. We should avoid becoming so concerned with protecting our products that we lose sight of the students and the value these creative expressions have for them and their learning.