

## **Introduction**

Copyright provides legal protection for a person's creative work for a limited period of time when it is fixed in a tangible form. (Kelly & Bonner, 2006, pp. 2-3). Section 101 of the United States Copyright Law defines a special category called "works made for hire" (para. 53). This section indicates that if a work is created by a salaried employee, who is contracted to produce a work and who utilizes the employer's resources to create such work, the employer owns the copyright (Crews, 2006, pp. 17-20). One potential "exclusion" to this rule occurs in the academic world. While it is not a part of the law, it has become a traditional custom for educational institutions to allow faculty members to own the rights to their own scholarly work.

This faculty ownership policy critique will address the University of North Carolina's (UNC) faculty ownership copyright policy. The policy can be found here: <http://www.northcarolina.edu/policy/index.php>. This critique addresses Section 500.2 and Section 500.2.1 of the University of North Carolina Policy Manual.

## **Faculty Ownership Policy Summary**

UNC's copyright policy is very extensive, providing a precise set of guidelines for faculty, staff and students alike. UNC's copyright policy seeks to provide encouragement and motivation to faculty, staff and students to create scholarly work associated with the university. It provides important protections in the determination of ownership and rights to research, inventions and or discoveries made by faculty, staff and students and it establishes policy for bringing those works to marketable consumption, when appropriate (The University of North Carolina Policy Manual, Section 500.2, 2010, pp. 1-2). UNC's policy specifically and clearly addresses copyright

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ownership. The policy is organized by “category of work” and by “category of author”, and the ownership policy includes distance learning works in its coverage (p. 6).

UNC’s policy does not call out any special provisions for distance learning materials; instead, it includes it with other works. The policy does not outwardly discourage or encourage the development of online course materials. It does include the phrase, “distance learning materials,” when showcasing example works for the policy governing “Traditional Works or Non-Directed Works.” Under that category, the creator is deemed the owner, unless the work is covered by the “works for hire” doctrine. By including this phrase, the institution is at least showing minimal support for, and acknowledges the existence of, this specialized type of work (p. 6).

The overarching copyright policy was adopted in June 1983, and it was amended twice, once in November 2000, and again in February 2001. This speaks to the attention that is paid by this university for the need for such policies to exist – and to be kept current – in the academic world. The November 2000 amendment specifically addresses the copyright ownership policy.

### **Policy Critique: Strengths and Weaknesses**

The overall strength of this policy lies in the detail it provides to faculty, staff and students with regard to ownership. It provides specific examples of the works included under each category and provision. It addresses the ability to waive the “works made for hire” doctrine under individual circumstances, thereby providing a fair, and flexible, ownership policy for both the creator of a scholarly work and the university. Under the UNC policy, most traditional, non-directed scholarly works are the property of the creator, unless the work was made under the explicit direction of the university, utilizing university resources. The policy includes “distance

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learning materials” in this category. If the university is directly associated with the scholarly work, and commercial proceeds are derived from the work, then UNC may agree to make provisions to protect the financial benefit of both the creator and the university through transfer of rights, shared ownership, or “shop rights” negotiations (pp. 7-9).

One perceived weakness of UNC’s policy lies in the “dispute resolution” clause. The clause is one simple statement: “The chief executive officer of each Institution shall designate a dispute resolution mechanism (such as a Copyright Committee or Intellectual Property Committee) for resolving any disputes which may arise among an author, other creator of a work, a third-party sponsor of a work, and an institutional official or office concerning copyright ownership or other rights” (p. 10). This clause, which was added as a result of the November 2000 amendment, does not offer explicit, precise, standardized direction on the dispute process. It leaves the process in the hands of the CEO without providing a clear plan of action. The selected “dispute resolution mechanism” language is not specific enough to protect the rights of both parties involved.

Unambiguous language detailing a uniform process, as well as the benefits or consequences of adhering to that process, should be included in the educational policy of this institution (p. 10).

While the policy says that there is a dispute resolution process, it offers no detail with regard to that process. It leaves the decision of how to proceed to resolve a dispute in the hands of the CEO, without offering a consistent set of rules. As a result, consistency in dealing with disputes cannot be guaranteed, nor can absolute compliance.

### **Specific Responses to Important Questions**

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The establishment of ownership guidelines is vital to both the creator of the work and the university. Who owns course materials created by faculty and what criteria determine ownership? While the faculty and staff may create the course materials, the University of North Carolina owns the copyright for course materials that are funded by or created by the direction of the university. When appropriate, the university does provide the possibility of “shop rights” which can be negotiated between creator and university. This flexibility demonstrates that the university encourages “protection of ownership rights for creators of works that require a different ownership model” (p. 6). This premise also holds true if a student (“teaching, graduate, and research assistant”) is contracted to create course materials; the University of North Carolina owns the student contributions to a course. These contributions fall under the “works made for hire” provision. As with faculty and staff “works made for hire,” the student has the right to attempt to negotiate for ownership rights with regard to their contributions.

It is also important to understand the provisions that a campus copyright policy makes for ongoing use of the course materials by the faculty creator or the institution for which the course was originally developed. Unfortunately, the University of North Carolina makes no such specific provisions. These are considered “works made for hire.” It is the responsibility of the creator of the work to enter into a negotiation for ownership rights with the university prior to leaving the university or prior to the closing of the initial course, if he did not want the materials he created used as ongoing materials for a university course.

It is also crucial for faculty, staff and students to be aware of policy considerations that govern the behavior of individuals, including conflict of interest, and consulting. There is a detailed conflict of interest clause governing trade secrets, discoveries and patentable inventions

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that were developed with university resources. If faculty, staff, or students wish to enter into personal consulting agreements with outside businesses, the contract governing that relationship must be approved by the university.

## **Conclusion**

Many educational institutions have their own copyright policies. Educational institutions, as well as their teachers and students, depend on the clarity and protection that specific copyright policies provide. Copyright infringement is against the law and educational institutions often use copyright policy to take the opportunity to ensure that their faculty and students are made aware of this. It is in the best interest of universities to have copyright policies in place that encourage faculty, staff and students to create their own original work, as this acts as a marketing tool for the university itself.

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