

COPYRIGHT AND DISTANCE LEARNING**I. Preamble**

This policy addresses the use of Technology Enhanced Course Materials (TECM) to effectuate distance learning at the University of Arkansas. Distance learning for purposes of this policy is two-way communication between a teacher and student separated by a geographical distance or time using technology for the purpose of facilitating and supporting the education process. It is an educational process in which most of the instruction occurs when the student and instructor are not in the same place. Instruction may be delivered and received at the same time (synchronous) or at different times (asynchronous). Distance learning may employ printed materials or audio, video or computer technologies. TECM are materials utilizing electronic transmissions to accomplish such an activity. The objective of this policy is to protect the copyright rights of both the faculty member and the University in TECM and to encourage the offering of quality distance learning programs. Distance learning programs that do not employ the use of TECM are not covered by this policy.

TECM have been a part of the curriculum at the University of Arkansas but, for a variety of reasons, there are still many questions about the rights and responsibilities of the University and its faculty members with respect to these methods of instruction. Since the demand for distance learning appears to be increasing and the continuing development of TECM in various media seems likely, it is important to address the issues raised by the creation, use and distribution of various forms of TECM and clarify the rights and responsibilities of each of the parties involved. This policy is a supplement to Board Policy 210.1, Patent and Copyright Policy, and only addresses copyright in the context of distance learning and the use of TECM to facilitate such education. To the extent this policy conflicts with Board Policy 210.1 on issues involving distance learning and TECM, this policy prevails with the exception of cases in which TECM are also protectable by patent law.

II. Issues Raised

- Who owns the copyright in TECM and how should such rights be protected?
- What are the responsibilities of faculty members to utilize various technologies to meet the needs of their currently enrolled students?
- Under what circumstances should faculty members be expected to prepare TECM for use by students not currently enrolled in their classes?
- What are the rights of faculty members with regard to the continuing use of TECM?
- Who may receive Revenues from the sale or licensing of TECM?
- What procedures should be followed to limit liability for infringement of copyright or invasion of privacy or publicity if TECM contains material that

belongs to someone other than the University or faculty creator(s) or contains the image or likeness of others?

III. General Guidelines

- A. *Copyright Ownership.* Board Policy 210.1 recognizes that in most instances faculty members own the copyright in scholarly works created by the faculty members. Faculty members thus normally hold the copyright in TECM they create on their own initiative. Board Policy 210.1 also recognizes ownership of copyright in works of authorship created under contract or as works made for hire as residing with the University (“University Works”). TECM created jointly by faculty authors and by those whose contributions would be works made for hire will be jointly owned by the faculty authors and the University. Specific ownership rights are addressed in Section IV of this policy.
- B. *Faculty Responsibility to Currently Enrolled Students.* Faculty members have a responsibility to meet the reasonable needs of their currently enrolled students, including those needs best addressed by the use of technologies to make class materials readily available. TECM such as tape recordings and videotapes created in the ordinary course of instruction and not intended for use beyond the end of the current semester or by students other than those registered for the class are the property and responsibility of the faculty member who creates or authorizes them. Faculty should be willing to utilize technologies appropriate to the circumstances to make their course materials reasonably available to their currently registered students. Faculty may dispose of such materials in whatever manner they choose at the end of each semester and in accordance with a campus or unit records retention policy.
- C. *Course Development.* Faculty may receive release time (including off-campus duty assignments) for duties performed in the best interests of the University's instructional program, including the development of TECM. The grant of release time does not automatically determine the appropriate category in which to place the work. Normally, such a grant would imply at least a minimal allocation of University resources.
- D. *Revision Rights.* Faculty members should normally retain the right to update, edit or otherwise revise TECM that become out of date, or, in certain circumstances, should place a time limit upon the use of TECM that are particularly time sensitive, regardless of who owns copyright in the TECM. These rights and limitations may be negotiated in advance of the creation of the TECM and may be reduced to writing. Absent a written agreement, each faculty member will have the right and moral obligation to revise the TECM on an annual basis in order to maintain academic standards. If the University believes a revision is necessary and no timely revision is made or if the revision is made and, in the University's opinion, it does not meet academic standards, the University

may refuse to market the product or the University may employ another person to update the TECM.

- E. *Revenues.* In accordance with Board Policy 210.1, faculty members shall receive all Revenues (as defined in Board Policy 210.1 and excluding tuition or fees) that may accrue from the commercialization of TECM they create on their own initiative. On the other hand, the University retains the right to receive all Revenues from the commercialization of TECM created by faculty members pursuant to contract or as a work made for hire. However, the University may share such Revenues with the creators according to Section I.F of Board Policy 210.1 or on other terms as set by the University in its sole discretion. Copyright law permits joint owners to pursue commercialization either jointly or separately but with an accounting to the other joint owner for Revenues received. Other circumstances may require review on a case-by-case basis (such as the creation of TECM initiated by a faculty member but using University resources over and above those usually and customarily provided.) Absent a contract specifying to the contrary, specific division of Revenues is addressed in Section IV below. In instances of joint ownership between faculty members where the University also retains rights to Revenues, the faculty members shall determine by written document the division of Revenues. Absent a written document of division of Revenues, the faculty members shall divide their share pro rata based on participation.
- F. *Contributed Materials.* Liabilities may be incurred with respect to the inclusion of materials in TECM other than materials created by the author of the TECM, including copyrighted music and sounds, and the inclusion of voices or images of persons in the TECM, including audience members and guest lecturers. It is the policy of University that all faculty and staff comply with the law, including copyright and privacy laws; therefore, it is the responsibility of the creator of TECM (normally the faculty member) to obtain all permissions and releases necessary to avoid infringing copyright or invading the personal rights of others.
- G. *Protecting TECM.* The University will determine whether to register the copyright and will be responsible for enforcement of TECM it owns. Faculty members will make such decisions and take such steps to protect TECM they own. Any one of the authors of a joint work may register and enforce the copyright in the names of all owners, with accounting. If one of the joint authors or owners is the University, only persons authorized by the University shall file for copyright registrations in the name of the University.
- H. *University Resources Usually and Customarily Provided.* When determining ownership and license rights in TECM, “university resources usually and customarily provided” includes such support as office space, library facilities, ordinary access to computers and networks or salary. In general, it does not include use of students or employees as

support staff to develop the TECM, or substantial use of specialized or unique facilities and equipment, or other special subventions provided by the University unless approved as an exception.

- I. *Retention of Nonexclusive License.* Except in Category I below, the University shall retain, at a minimum, a perpetual non-exclusive, royalty-free license to reproduce and use TECM in its internally administered programs of teaching, research and public service, including distance learning.
- J. *Conflict of Interest and Commitment.* The activities of faculty and staff under this policy shall be consistent with the provisions of Board Policy 330.1, Employee and Contractor Conflict of Interest, and Board Policy 450.1, Outside Employment of Faculty and Administrative Staff Members for Compensation, and campus policies on conflict of interest and commitment.
- K. *Administration.* The chief executive officer of the campus or unit shall delegate to a person or a committee the responsibility of administering this policy and applying the policy equitably across the campus or unit. If, however, such a delegation is not made, then the Campus Patent and Copyright Committee shall be so responsible. The faculty member should first meet with his/her department chair and dean to determine which category the TECM will be assigned and the ownership, institutional resource commitment and the sharing of any Revenues. A copy of the agreement will be forwarded to the designated committee or administrator for review and assurance that the policy is being applied in an equitable manner. The chair of the committee (or designated administrator) shall inform the dean and department chair of any inequitable applications of the policy and it shall be the responsibility of the dean and department chair to resolve the issue with the faculty member. If any dispute arises between the faculty member and department chair and dean or other appropriate or designated administrator, they shall initially attempt to resolve the disputed issue. Issues that cannot be resolved by the parties shall be decided by the chief executive officer of the campus or unit whose decision on such issues shall be final.
- L. *University-wide Committee.* The President of the University shall appoint a University-wide committee to advise the President on issues relating to distance learning, including copyright matters. The committee shall be composed of representatives from each campus and unit of the University and any others who the President in his or her sole discretion determines is appropriate for membership on the committee.

IV. Specific Categories Assigning Ownership and Compensation

Faculty members should meet with their Department Chair and Dean or other appropriate or designated administrator prior to creating TECM for distance learning in order to reach an agreement as to the appropriate category classification. Also, during the creation and development of TECM, continuing interaction among the parties is strongly encouraged. It is understood that in some circumstances the initial category classification may change based upon a modification in University support for the project. Written contracts should be entered into between the University and the faculty member to resolve any issues of ownership and compensation. *In addition, each campus or unit has the discretion to vary by written contract the ownership of and compensation for any TECM despite the category classification of the TECM.*

Category I – Totally Faculty or Staff Generated

Description of Individual and University Contribution:

The TECM resulted from an individual's efforts on his own personal time without any direct support from or through the University and without the use of any University resources beyond those usually and customarily provided.

Examples:

1. A faculty member in the School of Social and Behavioral Sciences at UAM works with a publishing company to create a Web-based course. The publishing company provides 700 hours of instructional design and production support and the course is mounted on the company's server. All of the work is done on the faculty member's own time, but some of the development is done on weekends using the faculty member's office computer. Development software licensed by UAM that is available throughout the department is also used. The course is mounted on a commercial server.
2. A professor at one of the law schools is approached by the publishing arm of a learned society to create a CD containing 2,000 images of evidence that this professor has photographed in preparing for classes over the years. The professor took the photographs on weekends using own camera and film but on the department's copystand. The learned society creates and markets the CD.

Ownership and Compensation:

The individual owns the copyright and is entitled to receive all Revenues from the commercialization of the TECM, subject to compliance with Section III.J of this policy on Conflict of Interest and Commitment.

Category II – Minimal University Resources

Description of Individual and University Contribution:

The work resulted from the individual's efforts with minimal resources above and beyond those usually and customarily provided.

Examples:

1. A faculty member at UAMS works with Digital Inc., a Web course publishing company, to put the course, *Serving an Aging Population*, totally on the Web. The University provides funds to purchase time from UAMS's Media Services to videotape two hours of lecture to be streamed as part of the course. In addition, the UAMS Library checks out to the faculty member one of two digital recording workstations for a period of two weeks. Digital Inc. spends over 300 hours recording materials provided by the faculty member and creating the Web course, and mounts the course on their server. The faculty member works on the project almost exclusively on his/her own time.
2. An adjunct faculty member at UAPB who teaches *Accounting Principles for Non-Profit Agencies* for UAPB volunteers to put half of the course on the Web. UAPB provides 30 hours of training on WebCT, the Web platform utilized. UAPB also provides twenty hours of assistance in creating a PowerPoint Presentation to be used as part of the course. The adjunct faculty member spends 200 hours creating the course on his/her own time. The course is mounted on the University's server.

Ownership and Compensation:

The individual owns the copyright and has the right to distribute the TECM and receive the Revenues for any distribution outside the University course delivery, subject to compliance with Section III.J of this policy. The University has a non-exclusive, royalty-free license to use the work as part of the University course delivery. The University may agree, in its sole discretion, to compensate the faculty member for its use of the TECM.

Category III – Substantial University Resources Are Provided

Description of Individual and University Contribution:

The work resulted from the individual's efforts with use of University resources above and beyond those usually and customarily provided.

Examples:

1. A faculty member at UA-Fayetteville volunteers to make her department's Literature for Children course totally available on the Web. The faculty member is provided with release time in the Spring Semester and paid for a course in the Summer to develop the product but also contribute some of her own time. The University provides a substantial grant to purchase a digital camera to use in the project or a .5 FTE Web developer housed in the department for a semester to work with the faculty member. Personnel from Continuing Education record speakers for the class and digitize audio and video, totaling over 300 clock hours of production and support services. The course is mounted on the University's server.
2. UALR's MBA Program decides to offer the degree by taping courses and allowing employees of two corporations to download the courses to view on their own schedules. Three faculty from the EMBA Program will rotate grading and answering questions for each course. A faculty member who teaches Human Resource Management volunteers to offer the first course. During the next year, this faculty member is given release time each semester and paid for two courses in the Summer. UALR funds production time in the Radio, Television and Film Department for the production of the tapes. Computing Services contributes significant hours in digitizing the tapes. The faculty member spends 60 hours over the year of their own time designing the course for television delivery. The University mounts the course on its server.

Ownership and Compensation:

The individual and the University may be joint owners of the copyright under Example 1 and therefore, absent an agreement, each has the right to distribute it and receive Revenues for any distribution outside the University course delivery, subject to an accounting of Revenues to the other joint owner and subject to compliance by the individual faculty member with Section III.J of this policy. At the minimum, the University has a non-exclusive, royalty-free license to use the work as part of University course delivery and a non-exclusive commercial license to market the course outside the University, subject to an accounting of Revenues to the faculty member.

Category IV – Work Made For Hire – University Assigns Duty to Faculty or Staff Member to Develop a Work

Description of Individual and University Contribution:

An employee of the University was contracted to develop a specific product. The University provided resources for the work above and beyond those usually and customarily provided. The work was carried out totally as a part of the faculty or staff member's assigned time.

Example:

1. The Dean of the College of Education at UALR assigns a faculty member to a course that will be videotaped and broadcast the next year to sites in five school districts as part of a new Master's Program offered by the college. The faculty member is given release time for the Fall and Spring Semester and is paid a task payment. The faculty member is assigned a .5 FTE research assistant for the academic year. The Radio, Television and Film Department contributes 250 hours in the design and production of the videotapes.

Ownership and Compensation:

The University owns the copyright and has exclusive educational and commercial ownership and licensing rights. The faculty or staff member is not entitled to a share of the Revenues except as agreed upon by the University in its sole discretion.

Category V – Faculty Member Uses Own Work as Part of Course Offering at University

Description of Individual and University Contribution:

The faculty member is using TECM that he/she created as part of his/her teaching duties at the University.

Examples:

1. See Category II, Example 1 above. In this case, the faculty member might offer the course at the University. The University would pay the previously negotiated fee to Digital, Inc. for access to the course materials, but this payment would not include compensation to the faculty member beyond the standard compensation for teaching the course.
2. See Category III, Example 2 above. In this case, the faculty member might teach the course to students in the program. There would be no compensation to the faculty member beyond the standard compensation for teaching the course.

Ownership and Compensation:

Ownership will be determined by categories one through four.

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