Intellectual Property Rights for Distance Education

Original Implementation: April 22, 2003
Last Revision: July 19, 2011

This policy applies only to courses in which 50% or more of the content is delivered electronically and for which the university has a compelling interest because of its obligation to deliver advertised curricular programs and courses. The university recognizes that faculty and students have exclusive ownership of copyrightable materials they create in the normal course of academic teaching or enrollment in courses, including, but not limited to syllabi, class notes and outlines, exams, handouts, and web enhancements.

The university supports the concept that ownership of intellectual property rights in distance education courses does not have to be an all-or-nothing proposition. The university believes that clarification of rights supports mutual interests of both the university and the developers of electronically delivered courses.

Strategic judgments about distance course development or the development of whole degree programs offered via distance education media are to be driven by curricular needs identified and approved by appropriate faculty, chairs, and deans in consultation with the director of the Office of Instructional Technology (OIT).

Introduction to Categories

Intellectual property rights for distance education courses are classified as one of three categories: 1) works totally faculty- or staff-generated; 2) works jointly generated by an individual and the university; and 3) works-for-hire.

The decision about the appropriate category for each specific course will be made by the faculty member, academic unit directors, college dean, and OIT prior to the development of the course, and according to the unique role of the course within the program.

Faculty members must meet with their academic unit director and OIT to sign a license agreement. The agreement must then be signed by the college dean and the university president. If circumstances warrant, a new license agreement may be signed by all parties reflecting any new categorization. Courses in which the university does not have a compelling interest may not require any license agreement with the university and can be considered the sole property of the authors. This determination, made by the president or designee, must be made before the course is developed. (An example of a "compelling interest" for the university might be a graduate course that is part of a complete online degree program that would be jeopardized if the faculty member left the university and the faculty replacement was either unskilled or
Rights That Apply to All Three Categories

Individuals creating these materials maintain the right to:

- make derivative works that do not compete with academic interests of the university;
- be identified as the author of the work, including the right to decide whether to allow the author's name to be displayed in association with the work;
- use the work for teaching, scholarship/research and service by colleagues or students in one's own department on the SFAcampus; and
- borrow portions of the work for use in compilations or other composite works that do not compete with academic interests of the university.

The university maintains the right to:

- be informed in advance of any uses, reproductions, distributions and dispositions of the work by the author(s) that may be construed as a conflict of interest or in conflict with university policy on outside employment; and,
- control whether the university's name or logo is displayed in association with the work.

Category 1 – Works Totally Faculty- or Staff-Generated

Works in this category result from an individual's efforts on personal time without any extraordinary support from or through the university. Ordinary support would include required support from OIT, or standard university resources such as office and laboratory space, library facilities, and ordinary access to computers, software, and networks.

Rights, Responsibilities, and Agreements

While employed by the university, an individual:

- has the exclusive right to allow or disallow the use of one’s intellectual property in part or in whole by others;
- has the exclusive right to market the work outside the university in a manner that does not compete with the mission or market of the university;
- shall revise the work as necessary to meet or exceed the Principles of Good Practice for Electronically Delivered Courses as required by the Texas Higher Education Coordinating Board (THECB);
shall submit to a review of the work by appropriate academic program leaders and OIT staff to verify that the course or other work meets or exceeds the *Principles of Good Practice for Electronically Delivered Courses*;

- is solely responsible for keeping the work current; and,
- shall abide by all applicable university policies, and state and federal laws.

Before any use is made of intellectual property materials, faculty members shall and do hereby warrant that they are the sole owners of the contributions to the works or that the contributions do not infringe on any copyright, violate any property rights, or contain any libelous unlawful material.

**Portability**

Upon the individual's departure from employment with the university, the university forfeits all rights to use the intellectual property of the individual unless permission is granted in writing by the individual.

**Category 2 – Works Jointly Generated by the Individual and University**

Works in this category result from the individual's effort in part or entirely on university time and/or with access to and use of specialized staff, facilities, and equipment beyond that ordinarily provided. These works also include those involving compensation in the form of direct grants, additional compensation, or release time for course development.

**Rights, Responsibilities, and Agreements**

While employed by the university, an individual:

- has the non-exclusive right to market the work outside the university in a manner that does not compete with the mission or market of the university;
- has the right to be informed in advance of any uses, reproductions, distributions, and dispositions of the work by the university;
- shall revise the work as necessary to meet or exceed the *Principles of Good Practice for Electronically Delivered Courses* and understands that any compensation for development of the work is contingent upon adherence to *Principles of Good Practice for Electronically Delivered Courses*;
- shall submit to an initial and periodic review of the work by appropriate academic program leaders and OIT staff to verify that the work meets or exceeds the *Principles of Good Practice for Electronically Delivered Courses* as required by the THECB;
is solely responsible for keeping the course or other work current; and,
shall abide by all applicable university policies, or state and federal laws.

Before any use is made of intellectual property materials, the individual shall and does hereby warrant that he or she is the sole owner of the contribution to the work, and that the contribution does not infringe on any copyright, violate any property rights, or contain any libelous unlawful material.

The university:

- has the non-exclusive right to market the work outside the university in a manner that does not compete with the mission or market of the university;
- has the right to use the intellectual property of the individual in a course as part of SFA course delivery for both credit and noncredit purposes;
- has the right to borrow portions of the work for use in compilations or other composite works;
- has the right to make derivative works if the author or authors assign copyright ownership to a third party;
- may not assign the use of the individual's intellectual property in the course or course components to another instructor without first allowing the individual the options to teach the section(s) of the course being offered up to and including what is considered an overload for the individual; and,
- has the right to assign revision and teaching tasks to another faculty member if an individual refuses to revise the work according to the recommendations made during a review process.

Portability

Upon the individual's departure from employment with the university, the individual has the:

- non-exclusive right to use the course as part of course delivery for both credit and noncredit purposes, provided the university's name or image (logo) is not used in connection with the course; and
- non-exclusive right to market the course, provided the university's name or image is not used in connection with the course.

Upon the individual's departure from employment with the university, the university has the:

- non-exclusive right to use the course, or course components, for both credit and noncredit purposes without the individual’s consent; and
• non-exclusive right to market the course.

**Category 3 – Works for Hire – University Generated**

Works in this category result from an individual's effort under a formal contractual arrangement with the university to develop and/or revise courses or as a result of the terms of the individual's employment or hiring agreement.

**Rights, Responsibilities, and Agreements**

While employed by the university, an individual:

- shall develop the course to meet or exceed the *Principles of Good Practice for Electronically Delivered Courses* and understands that any compensation for development and/or revision of the course is contingent upon adherence to the Principles as required by the THECB;
- shall submit to a review of the course by the appropriate academic program leaders and OIT staff to verify that the course meets or exceeds the *Principles of Good Practice for Electronically Delivered Courses* and the appropriate standards and contractual specifications;

The university:

- has the exclusive right to use the materials generated under the terms of the contract;
- has the right to borrow portions of the work for use in compilations or other composite works; and,
- has the exclusive right to market the course outside the university.

**Portability**

Upon the departure of the individual from employment with the university, the individual forfeits all rights to use or market the course or any components of the intellectual property unless permission is otherwise granted in writing by the university. The university retains the exclusive right to use and revise the course for both credit and noncredit purposes. The university has the exclusive right to market the course outside the university.
Cross Reference: Intellectual Property (9.4); Financial Conflict of Interest in Sponsored Activities (8.2); Instructor-Generated Materials (7.16); Copyrighted Works Reproduction (9.2); Distance Education Faculty Competencies and Compensation (7.9); Outside Employment (11.19).

Responsible for Implementation: President; Vice President for Academic Affairs

Contact for Revision: President

Forms: License Agreement for Works Totally Faculty or Staff Generated; License Agreement for Works Jointly Generated by the Individual and University; License Agreement for Works for Hire - University Generated; Principles of Good Practice for Electronically Delivered Courses.

Board Committee Assignment: Academic and Student Affairs