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July 8, 2019

**SUSAN CARLSON, VICE PROVOST
ACADEMIC PERSONNEL**

Re: Combating the Infringement of Faculty Intellectual Property

Dear Susan,

At its June 26, 2019 Academic Council endorsed the attached letter from the University Committee on Educational Policy (UCEP) offering options for addressing the illegal posting of copyrighted course materials via commercial websites that provide a venue for uploading those materials.

UCEP notes that based on advice from the Office of General Counsel, it is largely a faculty responsibility to police their course materials, because OGC is not authorized to contact companies hosting the material with a cease and desist request on behalf of faculty. The letter provides a suggested list of actions faculty and graduate students can take to mitigate the threat of copyright infringement, including placing language on each page of all course documents, and a statement on syllabi that selling or sharing course materials violates UC policy and the Student Code of Conduct.

Council agreed that faculty and students should be better informed about the scale of the problem, and its legal, UC policy, and student conduct policy implications. In addition to encouraging faculty to include boilerplate language on syllabi informing students about these issues, Council suggests that the University might develop a technological mechanism to enable faculty to easily request removal of their intellectual property from commercial websites, or at least facilitate a central information page where such a form lives. Finally, Council agreed that the University should update its 2005 policy on the Use of Recordings of Course Presentations, and other relevant UC polices, to explicitly address the rise of the commercial course material sharing websites.

This is a complex problem that needs coordination and dedication, and we look forward to working with you on solutions. UCEP's letter includes a link to a recent resolution from the CSU Academic Senate, which illustrates that other universities are taking action too.

Please do not hesitate to contact me if you have additional questions.

Sincerely,

Robert C. May

Robert C. May, Chair
Academic Council

cc: Provost Brown
Academic Council
Senate Directors



UNIVERSITY COMMITTEE ON EDUCATIONAL POLICY (UCEP)
Anne Zanzucchi, Chair
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April 16, 2019

**ROBERT MAY, CHAIR
ACADEMIC COUNCIL**

RE: INFRINGEMENT ON FACULTY INTELLECTUAL PROPERTY

Dear Robert,

Intellectual property with course materials has been a recurring Senate question, particularly the posting of materials via websites such as Course Hero, Koofers, and Chegg to name a few. On March 4th, the University Committee on Education Policy consulted with Angus MacDonald, Principal Counsel on Intellectual Property, to discuss this topic from a systemwide legal standpoint. The following memo highlights some important concepts from that consultation. Our request is that this memo is shared with Academic Council membership so that this information can be shared at the Division-level and distributed to faculty and graduate students. Included are proposed steps that can be taken locally and also systemwide.

The following are highlights from this consultation:

- Copyrighted materials are placed on these websites and faculty have been advised that it is up to them to contact the companies about taking down the materials, which is a burden to faculty.
- Counsel MacDonald works with all UC campuses on a daily basis on issues related to intellectual property and consults with various groups across the nation, and this issue comes up frequently.
- OGC is not able to intervene on this matter due to policy and practical reasons. The Digital Millennium Copyright Act (DMC) as written requires the copyright owner or copyright agent (e.g. the lawyer for the owner or other agents) to submit the take down request.
- OGC are not authorized agents and cannot sign on behalf of faculty.

Given these factors, there are actions faculty and graduate students can take to mitigate this threat as much as possible. As described in UC's 1992 [Copyright Ownership policy](#) and 2003 [Course Material policy](#), course materials are generally owned by the faculty member. With ownership, faculty also have the responsibility to police their materials. Faculty should place copyright language on each page of any document created. A statement might also be added to the syllabus and an announcement made at the start of the year indicating that the materials are protected by copyright, the faculty member is the copyright owner, and students should not allow others to reproduce or distribute them.

Counsel MacDonald advised that the following sentence be added to all course materials to automatically block distribution: “This content is protected and may not be shared uploaded or distributed.” Course Hero said in nearly all instances, the filter will catch this sentence.

Faculty and graduate students can also inform students that selling and distributing course materials not only violates the student code of conduct, but probably also violates UC’s 2005 [policy on the Use of Recordings of Course Presentations](#). Faculty should take advantage of the take down portals on these websites which offer a straightforward process. Faculty can also submit a takedown request letter. The online service providers have a duty to expeditiously take down the materials once they receive the request but there is no clear definition of expeditiously.

Long-term, the Academic Senate could hire outside counsel or a legal consultant to be on retainer to handle copyright notices on behalf of individual Senate faculty or the Senate as a whole. That is a resource-intensive response; however, it can be labor-intensive to individual instructors to avoid this distribution and dissemination of course materials.

Another approach is to consider a resolution via the Academic Senate which would send a systemwide response to this legal conundrum. An example that UCEP would recommend is the California State University’s resolution on this subject:

<https://www2.calstate.edu/csu-system/faculty-staff/academic-senate/resolutions/2018-2019/3349.pdf>

Such a resolution could note the faculty welfare and instructional burdens to this legal situation while also promoting an understanding across campuses about levels of responsibilities (e.g. updating curriculum materials to note digital sharing, clarifying related factors in our code of student conduct policies, etc.).

Understandably, this situation with course material sharing is a complex legal matter. UCEP suggests that a system-wide response as well as promotion of information at the division-level will help this topic have a shared governance response – in which the Administration and Senate can partner to protect course materials as copyright and limit rampant cheating. We thank Academic Council for giving this information and set of suggestions consideration for continued planning.

UCEP appreciates the opportunity to comment on this matter. Please contact me if you have any questions.

Sincerely,



Anne Zanzucchi, Chair
UCEP