



Intellectual Policy for Technology-Enhanced Courses

Responsible Office
Responsible Official

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Last Revision

I. Ownership of technology-enhanced courses.

1. **Applicability.** The policy presented is intended to apply only to the electronic or recorded components of technology-enhanced courses, including materials created for display in technology-enabled classrooms, electronic recordings created in the context of face to face or ITV-based classes, and electronic material used in web-based or web-enhanced courses. It is neutral with respect to ownership of any other type of intellectual property, including published material or patentable inventions, and cannot be relied upon as an analogy for interpreting or understanding other policies or claims of ownership in other kinds of property.
2. **Limitations of policy.** Ownership of course materials is governed by copyright law, and cannot be assigned by a policy document. The policy described here represents the University's standard position on these matters, but cannot be considered as a blanket statement on ownership of course materials. Existing law concerning ownership is open to multiple interpretations. In general, clarity can only be obtained by having all interested parties sign a contract in which course ownership and rights to course material are explicitly described. Course developers are encouraged to become familiar with the issues concerning intellectual property. To the extent any applicable written contract exists or is created between University and a course developer pertaining to the creation or development of Intellectual Property, the terms of such contract shall control in the event of any conflict between this policy and such contract.
3. **Situations in which the course developer is considered the course owner.** If a course making use of educational technology is developed at the developer's initiative, for use only in the developer(s) section(s) of a course, with no course development assistance provided by the University, then all course materials are considered to be the course developer's intellectual property. Such fall into this category if all of the following conditions apply:
 - 1) the development of electronic course materials has been largely initiated by the developer;
 - 2) the electronic course materials will not be used by another instructor, unless permission is given by the course developer, e.g., when the course developer is on sabbatical;
 - 3) the course developer will not receive additional compensation or research assistance from the University (grant from or through the University, stipend, course release) for the course development;

- 4) the University does not provide course development support above what is normally assumed for face to face classes.

If any of the conditions specified in this section do not apply, ownership must be negotiated and formalized by contract. Whether the course developer is considered the course owner or not, the University has certain residual usage rights described below in I.6.

4. **Who must sign a contract.** If a course developer does not fall under one or more of the conditions listed in I.3, a contract must be signed in which the rights of the course developer and the rights of the University are explicitly described. Ownership rights are not “all or none”, and can be “unbundled” so that course developer’s interests and the University’s interests are both protected (refer to section II.2, below).
5. **Impact of compensation on copyright.** If a University employee is compensated for course development above and beyond his or her normal salary (e.g. via payment of a stipend or grant, or course release time), then the course developer will be legally considered to be an “outside contractor,” as the work is considered to be outside of the normal scope of the course developer’s work duties. In these cases, the product will be considered a “work for hire” with the University as owner. A University employee may want to negotiate special contractual provisions as described below in II.2.
6. **Rights that the University always maintains.** Regardless of ownership of the course, the University shall be permitted to use course material and assessments for internal instructional, educational, and administrative purposes, including satisfying requests of accreditation agencies for faculty-authored syllabi and course descriptions. These rights will be explicitly included in any contracts pertaining to ownership of course materials. If there is no contract, the foregoing rights will be deemed to apply as a matter of University policy and condition of the course developer’s employment. If a course developer is the sole owner and wishes to transfer ownership rights to a third person, the developer must, as a condition of the transfer, require the transferee to grant the University the foregoing right for no consideration. The University will retain the foregoing rights should the course developer leave the University’s employ; and, in that case, the University may non-exclusively create derivative works from the course material with no compensation payable to the developer or her/his chain of transferees.
7. **Tracking copyright violators.** Course owners retain the sole responsibility for tracking copyright violations and prosecuting individuals misusing their course materials. In those cases in which the University and the course developer are co-owners, both parties shall decide what are the appropriate steps in enforcing their rights and how to allocate the costs. In those cases in which he or she shares in the income derived from the materials, an amount proportionate to his or her share of the University’s cost in enforcing its rights shall be charged to the course co-owner.
8. **Registration with the U.S. Copyright Office.** The course owner shall have the right to register the course materials with the United States Copyright Office at their expense. In those cases in which the University and the course developer are co-owners, either party shall have the right to register the materials in both parties’ names at their expense, or if the parties agree, such costs shall be shared. While such registration is not necessary, generally it makes prosecution of violators easier to pursue.

II. Content of copyright contracts.

1. **“Unbundling” of rights.** Contracts will be written such that various rights to the intellectual property are “unbundled.” This means that ownership is not all-or-none, but that rights may be assigned to best meet the needs of the University and course developers. Even though each situation depends on its particular circumstances, contracts will always include the provisions listed below. It is generally the case that contracts can be written to satisfy both course developer and University needs.
2. **How a contract may assign specific rights.** Contracts may assign ownership to the course developer(s), the University, or joint ownership may be specified. Regardless of ownership of the course, contracts may also assign specific rights to some or all parties to the contract as described below. These rights may include the right to re-use, revise, or re-distribute the course materials, or sell or license the course materials to a third party. Contracts may assign rights to royalties resulting from future commercial use of the course material to the University, the course developer(s), or both. Such contracts must be negotiated by all parties, and written with the assistance of University legal counsel, as may be appropriate. Several standard contracts will be available, but customized contracts can also be written under special circumstances.
3. **Ownership of copyright.** Contracts will typically assign ownership of copyright to the University, with specific rights assigned to the course developer(s) as described below.
4. **Portability of course materials.** If the course developer(s) does not own the course in accordance with section I.3, the course developer(s) will only be allowed to take course materials with them if they:
 1. are a full-time instructor at the University at the time the course was created, and
 2. leave full-time employment at the University, and
 3. move to another university full-time, and
 4. teach using these materials at the new university.

This provision applies only to the course content, and not the courseware software or space on servers owned or controlled by the University. This right will not apply to courses that are developed with the use of University resources, or unique to the mission and character of the program or Fairleigh Dickinson University. In some of these cases the course developer may be permitted to take the course to a different university if the other university pays a licensing fee to the University. The portability of the course materials or lack thereof will be explicitly assigned by contract. These portability rights cannot be transferred by the course developer.

5. **Right of first refusal to teach.** Course developer(s) that are FDU tenured or tenure-track faculty will generally have the right of first refusal to teach the course in subsequent terms. Such provisions will include the following conditions: 1) the right will hold only if the course developer is still employed by the University; 2) the right will hold only if the University deems that there is adequate demand for the course and it can be scheduled at the University's convenience; 3) the right will not hold if the department or school's staffing needs are clearly better served by having somebody else teach the course, and having the course developer teach the course would cause unnecessary hardship to the department or school; 4) the right only applies while the course materials remain essentially unchanged. In the event of a major course or curriculum re-design, the right will no longer apply.
6. **Right of first refusal to update course materials.** Course developer(s) that are FDU tenured or tenure-track faculty may wish to negotiate a right of first refusal to update or otherwise to improve the course materials, either for a share of the profits or for a stipulated amount. Such right will apply only while the such course developer is still employed by the University, and will not apply to major course or curriculum re-designs.
7. **Developer's scholarly rights.** Course developers will be given the right to use intellectual content from courses they have developed at FDU in scholarly contributions to books, articles, conventional courses, seminars, lectures, and similar scholarly activities in print and in person. These rights will be explicitly included in each contract.
8. **Licensing rights.** The University will generally maintain the right to commercialize and license courses that do not meet the requirements in section I.3. In the event that the University fails to commercialize or license such courses according to a mutually agreed schedule, such rights may revert to the course developer(s). A section concerning licensing rights will appear in each contract.

III. Resolution of Disputes.

The interpretation of this Policy and the application of this Policy to Intellectual Property rights which are governed herein shall at all times be in accordance with any applicable law. To the extent a dispute or apparent conflict arises which is not specifically governed by law, the University Provost shall be responsible for the interpretation and application of this policy. To the extent the Creator is unsatisfied with the University Provost's decision, the Creator may appeal such decision to the President of University, whose decision shall be final.

IV. Amendments.

This policy may be periodically reviewed, revised, or amended by University as it deems necessary in its sole discretion

Initial policy approved by Faculty Senate 11/26/2002
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