

Who Owns What? Unbundling Web Course Property Rights

A policy on Web course ownership may settle conflicts on campus

By **Robert Ubell**

A tug-of-war between faculty and administration over who owns online courses is taking place on our nation's campuses. Pulling forcefully on one end are those institutions that declare that because they paid faculty to develop e-courses and because they invested in Web-delivery software, supported instructional training and design, and absorbed most other costs, online courses belong to the university. Tugging at the other end are those faculty who say that because they created e-courses, copyright law and academic convention support their right to ownership, no different from on-site courses. Web classes, they argue, belong entirely to the faculty.

In a survey I conducted recently,¹ about half the schools that offer online courses reported that their institutions have a Web course intellectual property policy in place. At a quarter of these, the schools own all e-course rights. Just over 10 percent said that their faculty own the rights, while another third reported that faculty and the university share them. Half the schools said they haven't yet instituted a policy or are in the midst of devising one.

As expected, the results show little or no consensus. And no wonder... While the growth of e-learning has taken off, jumping from five percent of the nation's college and university students in 1998 to a projected 15 percent next

year,² online higher education is just being born. Many institutions haven't yet decided when to offer online courses, let alone whether to enter a political struggle with faculty over rights. Schools delivering Web-based classes face other hurdles first: selecting the right e-learning software, training Web-savvy instructors, choosing which courses to offer, and calculating how to compensate faculty for developing e-courses and teaching online, among dozens of other difficult tasks.

Recognizing that Stevens Institute of Technology's long-established intellectual property policies failed to account for e-courses, the school appointed a faculty committee to explore online course ownership and to recommend a new policy. Composed of veteran and junior members, the group first met in the summer of 1999.³ As director of WebCampus. Stevens, the graduate school's e-learning program, I was named chair.

Ownership, Use, and Compensation

In preparing for our work, the committee searched the relatively sparse e-learning rights literature, collected a few useful Web ownership policies in place at other colleges, and generated a list of key issues we felt needed study. We divided these into ownership, use, and compensation.

"Who owns the rights to Web-based courses?" covers these thorny issues:

- When institutions market and distribute e-courses, who owns the rights?
- Should copyright be in the name of the Web course developer or the university?
- Under what conditions, if any, may copyright be assigned to the school? Turning to use,
- If a school engages faculty to develop online courses, may the institution have someone else teach them?
- May the university license e-courses to third parties, such as other schools, publishers, or distributors?
- Do Web faculty have portability rights, allowing them to take their e-courses when they leave? As for compensation,
- Should schools pay course developers separately from their normal compensation as faculty?
- Should faculty be compensated separately for online instruction?
- If course developers receive portability rights — that is, if they can teach their e-courses elsewhere — should the next school compensate the originating college?
- Should developers receive additional payment in the event the school licenses online courses?
- In the event another faculty member at the originating school teaches an e-course, should the developer receive extra compensation? Digging into the literature, we found, as expected, that many had already

rushed in, either to protect their vulnerable interests or to explore the new territory. Among others, copyright experts, faculty unions, college administrators, and elected officials had weighed in with their observations, many sensibly, a few recklessly.

Unbundling

Luckily, our group found some serious work already done. The most impressive was a study of “unbundling,” a concept first articulated for e-courses by CETUS, the widely influential consortium jointly sponsored by California State University, State University of New York, and City University of New York.⁴ Among other things, unbundling acknowledges that rights are both extendable and divisible, and that they exist in the context of relationships. Unbundling recognizes that an instructional object — lecture notes, quizzes, and the like — can have many attributes and uses.

Consider, for example, a slide presentation. Illustrations can be displayed on a screen for classroom instruction, submitted for publication in a periodical, or published in a textbook. They may also accompany a talk at a technical conference. In an online course, students all over the world can click on them.

An instructional object can assume various identities, like an actor playing different roles, depending on where it's used. Unbundling proposes that different parties can own such versatile learning objects when they perform different functions on separate academic or scholarly stages — in the classroom, for example, or online. Not only can they be used differently, but copyright law gives the owner the right to sell these objects separately.

Publishing

Traditional scholarly publishing also offered policies adaptable to e-learning. For centuries, academics have voluntarily given certain rights to commercial or university presses because they appreciate that publishers possess the power to stock bookstore and library shelves aggressively. In exchange, authors benefit by earning royalties or by having

Stevens' Web-Course Ownership Policies Recommendations

Officially adopted by Stevens Institute of Technology in February 2001, these recommended policies are considered by some to be among the most liberal in the nation's colleges and universities.

Copyright: A course developer's copyright to an entirely online course should be assigned to the school when the faculty member agrees to enter a contract with the institution to develop it.

Compensation: The agreement should compensate developers for creating entirely online courses in “virtual space” — a provision that should not apply to online material presented in conventional classrooms in “physical space.” Faculty should also be compensated separately for entirely online instruction.

Use: While copyright for an entirely online course is assigned to the university, the faculty member retains the right to use course material components (notes, slides, exercises, and so on) for other purposes, such as conventional classroom teaching, publication, and lectures.

Portability: In the event the developer delivers an entirely online course at other schools, a usage license fee should be paid to the originating institution.

Third-party licensing: If an entirely online course is licensed to a third party — publisher, corporation, distributor, or other school — the course developer should receive a percentage of the net licensing revenue.

Additional compensation and limitations: If an entirely online course is taught at the school by someone other than the developer, the faculty member who created it should receive a percentage of the net tuition revenue.

their intellectual effort disseminated globally in the scholarly literature.

Publishing also acknowledges the divisibility of rights. Contracts usually call for authors to assign limited rights to publishers. In certain agreements, authors assign their rights for North American publication only, retaining foreign rights for themselves. Or, they give the publisher the right to the hardcover version only, with paperback rights reserved for the author. Free-lance writers commonly give publishers rights for their stories to appear in a magazine once only. The writer retains any remaining rights — reprinting, adaptation, and translation, among others.

Distinctions

Our committee articulated a number of distinctions we thought important.

At the faculty end of the e-learning enterprise is intellectual content, created by Web course developers. These syllabi, lecture notes, bibliographies, reading selections, examinations, and other elements constitute a string of instructional objects that can be used on site, online, and in other ways. At the institutional end is commercialization, with activities such as marketing, distribution, licensing, and management, among other services. These also include technical and e-commerce infrastructure provided by the school.

We also believed it important to distinguish between supplementary Web-based course modules, created by faculty to support conventional classroom teaching, and entirely online courses, delivered to students exclusively over the Web, with no or lim-

ited face-to-face instruction. Finally, we recognized that Web faculty engage in two distinct functions: They develop instructional objects for delivery over the Internet, and they teach online.

Policy Recommendations

In the end, our committee proposed the key recommendations shown in the sidebar.⁵ By unbundling different rights and uses, the policy recognizes the sometimes competing claims of faculty and academic institutions to intellectual property contained in Web courses.

In November 2000, after our recommendations had gone through a year of review by faculty, staff, and trustee panels, Stevens' faculty endorsed what our group believes is one of the most liberal Web course policies introduced in the nation's colleges.⁶ In February 2001, Stevens' Board of Trustees adopted it as the school's official e-learning intellectual property rights policy. It took more than 18 months for it to navigate through Stevens' academic channels — and we believe it was worth the wait.

The new rules were announced November 2000 at an e-learning conference at the University of Maryland.⁷ Experts who attended the Sloan Foundation-sponsored meeting applauded Stevens' solution. One senior college administrator claimed that the school's model "appears to have solved the question of Web course ownership in our universities."

The new policy is both academically fair and economically just. Faculty receive reasonable compensation for their intellectual contributions, not only from online development and instruction, but also from projected income streams that may flow from licensing and other revenue sources. The policy also gives faculty complete academic freedom over learning objects they create for scholarship and teaching outside of Web-based courses. What's more, universities — which may have invested heavily in e-learning and its marketing and licensing capabilities — can enter the e-learning marketplace confidently, their rights and potential income protected as well. *e*

Acknowledgments

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Endnotes:

1. The results are from an online survey of Web-based distance learning programs at U.S. colleges and universities conducted from November 20 to December 13, 2000.
2. Laurie Lewis et al., *Distance Education in Postsecondary Education Institutions: 1997-98* (U.S. Department of Education, Office of Education Research and Development, Washington, D.C., 1999) [<http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=200001313>].
3. Members of Stevens' Ad Hoc Committee on Web-based Intellectual Property Rights are Stanley Clark, Dilhan Kalyon, Lawrence Levine, David Naumann, Keith Sheppard, and Robert Ubell (chair). The committee was formed by Graduate School Vice President Joseph J.

Moeller, Jr. and School of Engineering Dean Bernard Gallois.

4. Consortium for Educational Technology for University Systems, *Ownership of New Works at the University: Unbundling of Rights and the Pursuit of Higher Learning* (California State University, 1997). Also available online at <http://www.cetus.org/ownership.pdf>.
5. Available at <http://attila.stevens-tech.edu/dof/intellectualprop.htm>.
6. R. Ubell, "Unbundling Intellectual Property: Recognizing Rights in Distance Learning," delivered at the 6th International Conference on Asynchronous Learning Networks, held Nov. 3-5, 2000 at the University of Maryland in College Park, Md. A Powerpoint slide presentation is available online at <http://www.aln.org/alnconf2000/>.

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