Policy

UNIVERSITY POLICY SR-03.01-01/14

TO: University of West Florida Community

FROM: Dr. Judith Bense, President

SUBJECT: Electronic Courseware Addendum to Intellectual Property Policy

REFERENCE: Section 1004.23, Florida Statutes

Policy/Purpose: To set forth University of West Florida Policy Concerning Ownership of Intellectual Property in Electronic Courseware

Responsible Office: Academic Affairs

Electronic Courseware Addendum to Intellectual Property Policy

In general, the University's intellectual property policy of July, 2002, as amended (the "Policy") and faculty collective bargaining agreement (the "CBA") address intellectual property rights in inventions and works created by University faculty and employees. However, certain concerns relating to electronic courseware have been discussed with the University's faculty and administrators and are addressed herein.

As with other inventions and works, two areas must be considered with respect to electronic courseware: ownership of the copyright and the concerns of the creator with respect to maintaining control over the quality of the work.

(1) Copyright

In general, copyright does not protect ideas, but only the specific expression of an idea in tangible form. Copyright is a form of protection provided by the laws of the United States to the authors of "original works of authorship" including literary, dramatic, musical, artistic, and certain other intellectual works. Generally the owner of the copyright owns the exclusive right to do and authorize others to do the following:

- To reproduce the copyrighted work in copies;
- To prepare derivative works based upon the copyrighted work;
- To distribute copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

- To perform the copyrighted work publicly; and
- To display the copyrighted work publicly.

Copyright protection arises from the time the work is created in fixed form. It is an incident of the process of authorship. The copyright in the work of authorship immediately becomes the property of the author who created it. Only the author or those deriving their rights through the author can rightfully claim copyright. However, in certain circumstances, the employer and not the employee may be presumptively considered the author of the work. Such works include the following:

- a work prepared by an employee within the scope of his or her employment, or

- a work specially ordered or commissioned for use as a contribution to a collective work (i.e., part of a motion picture or other audiovisual work, translation, supplementary work, compilation, instructional text, test, answer material for a test, or atlas) if the parties expressly agree in a signed written instrument that the work shall be considered a work made for hire.

(2) Quality

In addition to copyright, creators are concerned with the ability to maintain "quality control" of the content, presentation and use of electronic courseware that they develop, particularly for derivative works. Accordingly, it is important in general to respect the wishes of the original creators in the University's use of their work (particularly when the University has no ownership in the work). These concerns are also very important when considering the University's right to make derivative works without the original author's participation.

Ownership.

As set forth in the Policy and the CBA, the University does not own the rights to: (i) books, articles, and similar works, the intended purpose of which is to disseminate the results of academic research or scholarly study; and (ii) works used solely for the purpose of assisting or enhancing the faculty member's instructional assignment, including instructional technology material, as defined in the Policy and the CBA (such works being herein referred to as "Instructional Works"), and including Instructional Works presented through an on-line learning environment ("Electronic Courseware") *if those Instructional Works are developed without the use of appreciable University support.* Generally, "appreciable University support" means use of University facilities or resources not generally available to the faculty or to other employees, and includes, but is not limited to, release time, additional state compensation, and support provided by other public or private organizations when it is arranged, administered, or controlled by the University. Use of the University library, personal computers provided for instructional assignment, or software generally available to the faculty does not, in and of itself, constitute "appreciable University support."

If the Instructional Works are developed with the use of appreciable University support, they constitute University Supported Works within the terms of the Policy and University Supported Efforts within the terms of the CBA and the University owns the rights to such works. The proceeds of any commercialization shall be shared with the creator to the extent provided for other University Supported Works or University Supported Efforts pursuant to the terms of the Policy and the CBA. Under certain circumstances, Instructional Works may be developed as "works made for hire" pursuant to the terms of sponsorship requirements or departmental needs. Under such circumstances, proceeds of commercialization are not shared and the creator's rights to control derivatives are strictly controlled by contract with the creator.

1. Electronic Courseware Developed With No Appreciable University Support and Not Presented Through an Online Learning Environment Maintained By the University. If Electronic Courseware is developed with no appreciable University support and is not presented through an on-line learning environment maintained by the University, the Electronic Courseware shall be and remain the property of the creating faculty member and the University will assert no rights in connection therewith.

2. Electronic Courseware Developed With No Appreciable University Support Presented Through An Online Learning Environment Maintained By the University. If Electronic Courseware is developed with no appreciable University support other than presentation through an online learning environment maintained by the University ("***Limited Support Electronic Courseware***"), the Limited Support Electronic Courseware shall be and remain the property of the creating faculty member; however, before the Electronic Courseware is presented through the online learning environment maintained by the University, the creating faculty member and the Provost or designee (or executive officer for a non-academic unit) will enter into an appropriate agreement concerning the Electronic Courseware. The agreement will (i) set forth the process for updating and maintaining the Electronic Courseware; and (ii) provide that the University is granted a non-exclusive, non-transferable, royalty-free license in the Limited Support Electronic Courseware for its educational or research use during the period when the Limited Support Electronic Courseware is used by the creator in the University's online learning environment and, generally, for a period of not less than two years from the date the Limited Support Electronic Courseware is last used by the creator in the University's online learning environment.

   Except for this non-exclusive license, the creator will have an unrestricted right to use and reproduce the original Electronic Courseware materials, to prepare derivative works therefrom, and to sell and distribute the course materials and derivative works as the creator sees fit, without further obligation to the University (subject to the University's policies with respect to conflicts of commitment and interest).

   This Addendum is not intended to restrict the University and the creator from mutually agreeing upon different terms for the license granted, nor is it intended to prohibit the University from waiving all rights to Limited Support Electronic Courseware, depending upon the specific factual situation presented.

3. Electronic Courseware Developed With Appreciable University Support. If the Electronic Courseware is directed, assigned, or developed with appreciable University support ***("Standard Support Electronic Courseware"***), such Standard Support Electronic Courseware shall be the property of the University. As set forth in the Policy and the CBA, a written agreement between the creator and the Provost or designee (or executive officer for a non-academic unit) should be entered into with respect to Standard Support Electronic Courseware to reflect the equities of the faculty member and the allocation of proceeds resulting from such work, as well as provisions relating to the use or revision of such works by persons other than the creator. .

   This Addendum is not intended to restrict the University and the creator from mutually agreeing upon different terms for the license granted, nor is it intended to prohibit the University from waiving its rights to Standard Support Electronic Courseware, depending upon the specific factual situation presented.

University's Rights to Update and Maintain Course Materials:

With respect to all Electronic Courseware materials presented through the University's on-line distance learning environment, the University needs the right to maintain continuity beyond the original creator to the extent necessary to correct errors, to keep the content current and relevant, and to maintain the usefulness and quality of the course material as a University instructional offering.

With respect to Limited Support Electronic Courseware and in the absence of an agreement with the creator giving the University additional rights, any University use of the Limited Support Electronic Courseware shall be without substantial modification[1] during the license period except for revisions provided by the creator. At all times, the creator's authorship shall be properly attributed.

With respect to Standard Support Electronic Courseware to which the University will assert more than the limited license described above, the agreement with the creator will specify the University's rights to maintain continuity with respect to the Standard Support Electronic Courseware. For instance, one of the following may be selected:

- Creator has no objection to the Provost or designee (or executive officer for a non-academic unit) directing other employees to make insubstantial modifications;[1]

- Creator has no objection to the Provost or designee (or executive officer for a non-academic unit) directing others to make modifications or derivative works, subject to

[1]Modifications that are not considered substantial for this purpose shall include, but not be limited to: (a) changes in email addresses and due dates; and (b) updated and new references, journal articles, audio and video links. Any new material added should be clearly marked as not being the work of the original creator. Any deletion of material is considered substantial unless the deletion is related to the changes described in clause (a).

the right of the creator to review and approve modifications or derivative works before dissemination;

- Creator is granted the first opportunity to make derivative works at the request of the Provost or designee (or executive officer for a non-academic unit), on terms and conditions to be negotiated.

- Creator has no objection to the Provost or designee (or executive officer for a non-academic unit) directing other employees to make modifications or derivative works based thereon, with no further obligations to the creator.

If the creator moves to another institution, for some course material (such as material that is highly interactive and/or largely based on the creator's pre-existing original material), it may not be practical or feasible for the course to be administered by another faculty member serving in the creator's stead. In other situations, the course will become an integral part of an instructional offering or degree program, and the University will continue offering the material even if the original creator leaves the University. The Provost or designee (or executive officer for a non-academic unit) must consider long-term use needs of the course materials, and work out mutually agreeable terms with the creator. Options include, but are not limited to, discontinuing use of the course material immediately, negotiating transition arrangements such as retaining the right to use it for some specified period of time while working out agreements with other faculty to take over the course and develop new material, or retaining the creator as a consultant to provide support under contract.

Forms

Sample forms of agreements that may be used are attached.

1. Waiver of University Rights.
2. Agreement for Limited Support Electronic Courseware.
3. Agreement for Standard Support Electronic Courseware
4. Agreement for Work Made for Hire

Waiver of Rights

Notwithstanding anything in this Addendum to the contrary, the University may choose not to assert rights otherwise granted herein to any Electronic Courseware materials. Such election must be in writing signed by the Provost or designee (or executive officer for a non-academic unit).

Effective Date

This Addendum shall be effective on its date of enactment as a policy and shall apply generally to all Electronic Courseware first presented through the University's online learning environment after the effective date of this Addendum unless the creator and the University otherwise consent with respect to a particular item of Electronic Courseware. This Addendum shall not modify the rights or duties of any party set forth in a written agreement. Nothing in this Addendum shall prohibit a Department or College from enforcing written policies or procedures promulgated prior to the date of enactment of this Addendum, specifically including the policy of the College of Business relating to Electronically Developed Course Materials.

Approved By:

Dr. Judith A. Bense, President Date: 1/14/14

Forms
(available from Office of General Counsel)

Waiver of University Rights
Agreement for Limited Support Electronic Courseware.
Agreement for Standard Support Electronic Courseware
Agreement for Work Made for Hire

This Addendum incorporates content included in a Report on Courseware Development and Distribution prepared by the Intellectual Property Subcommittee for the University of Illinois.