

MEMORANDUM

Office of the Provost

C.L. Max Nikias
Provost and
Senior Vice
President for
Academic Affairs

To: Academic Deans

From: C. L. Max Nikias *C. L. Nikias*

Date: September 12, 2005

Subject: Courseware Policy

Enclosed is the policy on the use and ownership of what is known as "courseware," including material like course syllabi and courses delivered by the Internet.

Several faculty committees and the Academic Senate have joined with the Provost's Office and General Counsel's Office in the long effort to develop this policy. It appropriately protects traditional faculty rights while providing for a wide range of circumstances that will be impacted by constantly evolving technology.

This policy defines the relevant principles. In order to address specific issues, we will develop a Question and Answer companion document, and templates for use when individual contracts are appropriate.

Enclosure

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University of Southern California Courseware Policy

Section 1. General; Policy Objectives

The purpose of this document is to provide the University's specific policy for all courseware. For purposes of this policy, each and all of the following will be referred to generically as "courseware:" course syllabi, the expressive content of digital teaching media, CD-ROMs, courses delivered by television, video, Internet or other media or technologies not yet developed, Web publications, and any other materials created for the purposes of teaching or instruction or to support the teaching of a course.

Section 2. Faculty Ownership

Faculty members own courseware they have created in the absence of any sponsored project agreement (see Sponsored Project Manual) or other agreements giving rights to USC and with only incidental use of University fund or facilities. Incidental use of University resources includes the following:

- Only minimal amount of unrestricted funds have been used; and
- Only minimal amount of time has been spent using University facilities, equipment, or resources other than the use of offices, libraries and routinely available office type equipment such as personal computers, all of which is regarded as incidental.

When courseware is created under these circumstances:

- The author(s) will own the courseware.
- The author(s) will not be entitled to charge the University or USC students a fee, apart from the salary compensation they otherwise receive, for using author-owned courseware in teaching by the author(s) at the University.
- If the author(s) leaves the University, the University will have the right, at no cost, to use, reproduce, adapt, modify, update, exhibit, display, sell to its students and use in compilations all courseware created during the period of University employment of the author(s) for a period of three years (or longer as may be negotiated between the author(s) and the school) after the (final) author's departure.

Section 3. University Ownership

The University owns courseware when created under the following conditions:

- When the courseware is part of a sponsored project agreement; or
- When the courseware is developed through any more than incidental use of University resources, as “incidental use” is defined in Section 2 above; or
- When a separate agreement exists between the University and the creator that includes compensation for the creator in time and/or additional compensation for creating courseware.

When courseware is created under conditions of University ownership:

- The share of net royalty income that results from the external licensing or sale of courseware owned by the University will be as follows: one third (33 1/3%) to the author(s), one third (33 1/3%) to the school, one third (33 1/3%) to the University.
- “Net royalty income” means all gross payments received minus any direct expenses not reimbursed by a license, such as fees for intellectual property protection and maintenance, marketing, licensing and auditing expenses, and direct expenses associated with the creation, production and development of the courseware, including reasonable overhead.
- If University owned courseware is created under contract to an external entity in order to be administered as a course or courses for that entity’s employees, the author(s) will be compensated through regular or special salary arrangements associated with producing and administering the course(s).
- If the courseware is developed in a joint project with an external agency or entity, the author(s) will be entitled to an aggregate amount of one-third (33 1/3%) of the University’s share of the net royalty income that results from the external licensing or sale of the courseware, with the remaining one-third (33 1/3%) going to the school and one-third (33 1/3%) going to the University.
- The University will control the right to use, reproduce, adapt, modify, update, exhibit, display, sell, use in compilations and create derivative works from such courseware.

Section 4. Courseware Contracts

When there are ambiguities or when courseware is developed by multiple schools or units, to avoid conflict, it is in the best interest of the author(s) and the University to enter into an agreement in writing prior to the start of development of courseware by the author(s). This contract should:

- Specify ownership consistent with the principles set forth above.
- Define the contributions and responsibilities of each of the parties and the plan for reimbursement or distribution of gross and net revenue. This is particularly important in courseware development for which funding is provided directly or indirectly by a school, the University, and/or by a third party.
- Address the nature and amount of royalty or other payments, if any, to the author(s) whose courseware is used as the sole basis for a course without further involvement of the author(s) including payments, if any, for maintaining and updating the course.
- Address whether and how the faculty member may use courseware if the faculty member leaves the University.
- Address any other matters of concern not included in this Policy.

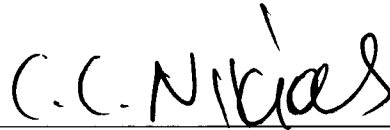
Section 5. Competition and Conflicts of Interest

- Courseware created and/or owned by faculty may not be used within or licensed for use by other institutions or enterprises while the faculty are in the employment of USC in a manner that competes with or diminishes its value to the University of Southern California. Because the Dean is in the best position to identify such competition and to avoid conflict, faculty are required to get a written agreement with their Dean prior to engaging in the creation of courseware and/or the teaching of courses for other institutions or enterprises. If the faculty member cannot reach agreement with the Dean, or if the response time is not reasonable, he or she may appeal to the Provost, who will be advised by the Distributed Education and Distance Learning Committee. Deans are encouraged to explain to their faculty which faculty uses of courseware are likely to be readily and speedily approved, and which faculty uses of courseware require greater advance notification so that potential conflicts can be evaluated.
- When a faculty member or a group of faculty create courseware under the conditions described in Section 2 above entitled Faculty Ownership, use of the courseware by other educational institutions must nonetheless conform to the policies entitled **Conflict of Interest and Ethics: Policy and Procedure** and **Conflict of Interest in Research** to avoid possible conflicts of interest or commitment.
- Courseware that is not created for a single institution or enterprise and is designed to play the same role as a textbook in multiple institutions, supplementing a course rather than constituting the basis for and/or the tools for teaching the course, will typically not give rise to conflicts of interest.

Section 6. USC Trademarks and Third Party Copyrights

- Faculty, apart from proper identification of University personnel, may not use USC trademarks or other identifying designations without the prior written consent of the University; and when the University owns the courseware, the courseware must use USC trademarks or other identifying designations if the University chooses. Such consent may be obtained through the Trademarks and Licensing Services Office (“TLSO”). Any such permitted use must be in accordance with the USC Graphic Identity Program, available for review as part of the TLSO’s web page.
- Faculty are also advised to review **Section 2.2** of the **General Policies Regarding the Electronic Communication Infrastructure at USC**, part of **ISD’s Policies**, concerning the need to respect third party copyrights.

Issued by:



C. L. Max Nikias, Provost and Senior Vice President
for Academic Affairs

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