What is a Copyright?

- Copyright is the right to exclude copying of expressions of ideas, generally in the form of
  - Writings,
  - Videos,
  - Works of art,
  - Photographs,
  - And the like.
- Copyright ownership is separate from ownership in the physical work.
Copyright Protection Eligibility

- Any work independently and originally created in a fixed tangible medium is eligible.
- Three part test: the work must
  1. Be independently created by the author,
  2. Be the result of at least some creative effort on the part of the author, and
  3. Exist in a fixed physical form.

Why is Owning the Copyright in Course Content Important to Universities?

- The owner of the copyright has the right to
  - Reproduce the work in any format;
  - Prepare derivative works;
  - Distribute copies of the work to the public (e.g., sale, rent, lease);
  - Perform the copyrighted work publically; and
  - Display the copyrighted work.

Are Classroom Lectures Copyrightable?

- Lecture or classroom presentations that are not simultaneously recorded are NOT copyrightable.
- A lecture must be recorded (either by video or audio) to be copyrightable.
### What is Protected by Copyright?

- Literary Publications
- Course Materials and Presentations
- Syllabi
- Software Applications
- Musical compositions
- Musical recordings
- Photographs
- Paintings
- Photographs
- Multimedia
- Plays
- Choreography

### The Scenario

- Professor X, of XYZ University, creates a course in English.
- Professor’s friend, Joe, videos professor teaching 15 classes that comprise the course.
- Joe gives the videos to Professor X.
- Professor X uploads the videos to YouTube.
Who Should Own the Videos?

- Professor X?
- Joe, the videographer?
- XYZ University?

Who Owns the Copyright?

- The author of a copyrighted work is the person who conceives of and manifests the work—i.e., the person who creates the work.
- Although work may be suggested by a department chair or colleague, the person who creates the work is usually the owner.
- Exceptions to this rule are:
  1. when an author assigns or transfers his copyright to another party, or
  2. if the work falls under the doctrine of “Works Made for Hire”—in which case the employer is the author.
- “Joint Authors” jointly own a copyright.

Work Made for Hire

Assuming no contract regarding the video is in place ... what would it take for XYZ University to own the videos?
Work Made for Hire

- A “work made for hire” consists of either
  - Certain works that are specially ordered or commissioned, or
  - a work prepared by an employee within the scope of his or her employment.

Work Made for Hire: Employee

- Who is an employee of XYZ University?
  - Professor X?
  - Joe, the videographer?

- NOTE: Many adjuncts, consultants, and contractors who are paid for their work are not “employees”, and a written agreement will be required in order for the university to own the works created by these individuals.

Employee: CCNV Factors

1. The hiring party’s right to control the manner and means of production
2. Skill required
3. Source of the Tools
4. Location of the Labor
5. Duration of the relationship
6. The right to assign additional projects
7. Control over hours of Work
8. Method of payment
9. Right to hire assistants
10. Business of the hiring party
11. Employee benefits
12. Tax treatment
Within the Scope of Employment:
Factors
1. Is the Work the type that the Employee was hired to perform?
2. Was the Work created substantially within the authorized time and space limits of the job?
3. Was the Employee actuated at least in part by the purpose to serve the Employer’s interest?

Joint Authors

- Joint authors own works that are jointly created.
- Authorship is shared and each author owns the same interests as the other authors and may transfer, lease, or alter the work without the permission of the other authors.
- In the absence of an agreement stating otherwise, each co-author ALSO has the obligation to account to the other co-author.
  - E.g., Co-Author A and Co-Author B jointly create the Work. A can sell copies of the Work without B’s permission, but A must account to B (i.e., pay B 50% of the profits).
Joint Authors

- **Online courses** can involve joint authors. E.g.,
  - Lecturer and videographer, or
  - Student-created works that are shared with the classes.

Effect of Scenario

- **Joint Authorship**
  - Assuming the videos were Works Made for Hire, then XYZ University and Joe are co-owners.
- **Copyright Violation**
  - If the videos are Works Made for Hire, then Professor X violated Copyright by uploading the videos to YouTube.
- **Takedown**
  - If XYZ University and Joe are co-owners, then either could effect takedown of videos from YouTube.
- **Licensing and Accounting**
  - If XYZ University and Joe are co-owners, then either could license the videos and both must account to the other.

Agreements, Policies, and Guidelines
Alternative Ownership Policies

- About 70% of 110 surveyed higher ed institutions have some policy in place regarding who owns online courses.
  - University completely owns course and material:
    - More than 1/3.
  - Professor completely owns course and material:
    - About 10%.
  - University and Professor jointly own course and material:
    - About 40%.
    - E.g., professor owns course material and university owns the multimedia components.

What Type of Agreements Could be Used for the Scenario?

- University XYZ might require that all its professors, including Professor X, enter an agreement with any third parties creating copyrightable content, such as Videographer Joe, transferring Videographer Joe’s rights in the work to XYZ University.
- University XYZ might require that it be notified of any prospective third party contributions so that it can enter an agreement with the third party, such as Videographer Joe.

Specific/General Terms

- Employment Agreements can be used to control rights/responsibilities for copyrightable material.
  - Rights can be tailored to meet University/Professor goals.
- University Policy/Handbook can be used for general terms.
University Ownership – What Rights Might Be Licensed?

- The University Might License to the Professor, the rights to . . .
  - Make reproductions for use in teaching, scholarship, and research,
  - Borrow portions of the work for use in other works,
  - Alter, add to, and update the content of the work,
  - Be identified as the author – under the law the author is the University,
  - Take the work to and use the work with a new employer, or
  - Be informed of any uses, reproductions, or distributions.

Professor Ownership – What Rights Might Be Licensed?

- The Professor Might License to the University, the rights to . . .
  - Duplicate the work for teaching, scholarship, and research,
  - Make derivative works on a limited basis,
  - Use the institution’s name or logo in association with the work, or
  - Use the work in compilations or other composite works, such as course packs.

Join us for Lunch . . .

- Food Truck Wednesday – @dcfilmrow
  - 11:30 am to 1:30 pm.
  - Check out DC on Film Row on Facebook for Details.
Thank You

Please refer any questions to:

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