



MIDWESTERN STATE UNIVERSITY

Operating Policies & Procedures Manual

University Operating Policy/Procedure (OP)

OP 76.02: Intellectual Property Rights - Distance Education. Creation, Use, Ownership, Royalties, Revision and Distribution of Electronically Developed Course Materials

Approval Authority:	President
Policy Type:	University Operating Policy and Procedure
Policy Owner:	Provost and Vice President for Academic Affairs
Responsible Office:	Director, Academic Outreach & Distance Education
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A. Introduction

This policy addresses the use of distance education at Midwestern State University. Distance education is a pedagogy whereby students are instructed via electronic transmissions, often utilizing electronically published course materials. Electronically published course materials are materials utilizing electronic transmissions to teach students at sites distant from the University campus. The purpose of this document is to protect the rights of the faculty member, the University and students and to encourage the offering of quality distance education learning programs. It should be noted at the outset that in all cases, except materials for hire, the faculty member retains the ownership and copyright of the work as well as the ability to market the work commercially. Licensure, which is the right to market the electronically developed course materials, is addressed under the ownership and compensation heading in each of the five categories specified in Section B. Electronically published course materials have been a part of the curriculum at the University, but for a variety of reasons, there are still many questions about the rights and responsibilities of the University and its faculty members with respect to these methods of instruction. Since the demand for distance education appears to be increasing and the continuing development of electronically published course materials in various media seems likely, it is important to address the issues raised by the creation, use and distribution of various forms of electronically published course materials and clarify the rights and responsibilities of each of the parties involved. This policy is a supplement to the

Intellectual Property Rights - Distance Education. Creation, Use, Ownership, Royalties, Revision And Distribution Of Electronically Developed Course Materials.

University's Intellectual Property Rights Policy and only addresses distance education. To the extent this policy conflicts with the University's Intellectual Property Rights Policy on issues involving distance education, this policy prevails.

B. General Guidelines

1. Copyright Ownership

- a. The University's Intellectual Property Rights Policy recognizes that in most instances faculty members own copyright in scholarly works created by the faculty members. Faculty members thus normally hold copyright in electronically published materials they create on their own initiative. Midwestern State University's policy recognizes ownership of copyright in works created under contract or as works for hire as residing with the University.
- b. Electronically published course materials created jointly by faculty authors and others, whose contributions would be works for hire, will be jointly owned by the faculty author and the University. Any owner of copyright in electronically published course materials may secure copyright registration; joint owners may, but do not have to, agree to bear responsibility for enforcement of the copyright. Faculty members should note that ownership of works of students is controlled by Copyright Law, which means that students own copyright in their works and faculty members must obtain their permission to incorporate student work in a faculty-authored work. Specific ownership rights are addressed in Section IV below.

2. Course Development

Faculty may receive course releases(s) for duties performed in the best interests of the University's instructional program, including the development of electronically published course materials. Course release does not automatically determine the appropriate category in which to place the work. Normally, a course release would imply at least some allocation of University resources, i.e., Category II.

3. Royalties

In accordance with the University's Intellectual Property Rights Policy, faculty members shall receive all royalties that may accrue from the commercialization of electronically published course materials they create on their own initiative. On the other hand, the University retains all royalties that may accrue from the commercialization of electronically published course materials created by faculty members pursuant to contract or as a work for hire, including electronically published course materials created as a condition of employment. Copyright law permits joint owners to pursue commercialization either jointly or separately, with accounting. Other circumstances may require review on a case-by-case basis (such as the creation of electronically developed course materials initiated by a faculty member but using substantial University facilities.) Absent a contract specifying to the contrary, specific

division of royalties is addressed in Section IV below. In instances of joint ownership between faculty members where the University also retains rights to royalties, the faculty members shall determine by written document the division of royalties. Absent a written document of division of royalties, the faculty members shall divide their share pro rata based on participation.

4. Contributed Materials

Liabilities may be incurred with respect to the inclusion of materials in electronically published course materials other than materials created by the author of the electronically developed course materials and inclusion of voices or images of persons in the electronically developed course materials, including audience members and guest lecturers. It is the policy of the University that all faculty and staff comply with the law, including copyright and privacy laws; therefore, it is the responsibility of the Creator of electronically published course materials (normally the faculty member) to obtain all permissions and releases necessary to avoid infringing copyright or invading the personal rights of others. Students must agree in writing to allow their image and their words to be transmitted electronically and/or to allow their work to be used by another.

5. Use of University's Name

Faculty members must observe the same requirements that apply in other contexts with respect to the use of the University's name.

6. Protecting the Work

Midwestern State University will determine whether to register the copyright and will be responsible for enforcement of works it owns. Faculty members will make such decisions and take such steps to protect works they own. Any one of the authors of a joint work may register and enforce the copyright in the names of all owners, with accounting.

7. Retention of Non-Exclusive License

Except in Category I below, the University shall retain a non-exclusive educational license to reproduce and use the electronically developed course materials in teaching University classes on or off campus. Compensation to the faculty member for use of the course shall be as specified below.

8. Administration

The responsible Administrator and Committee shall be responsible for the administration of this policy and applying the policy equitably across the campus. The faculty member should first meet with his/her department chair and dean to determine to which category the electronically published materials will be assigned and the ownership, institutional resource commitment and the royalties. A copy of the agreement will be forwarded to the responsible supervisory Administrator and Committee for their review and assurance that the policy is being applied in an equitable manner. The responsible Administrator shall inform the dean and

department chair of any inequitable applications of the policy and it shall be the responsibility of the dean and department chair to resolve the issue with the faculty member. If any dispute arises between the faculty member and department chair and dean, they shall initially attempt to resolve the disputed issue. Disputes not resolved between the faculty member, department chair and the dean would be forwarded to the Intellectual Property Policy and Rights Committee.

C. Specific Categories Assigning Ownership and Royalties

Note: Categories I through IV do not address the case in which a Midwestern State University faculty member uses his/her own work in an MSU class. For this case, see Category V below. Faculty members should meet with their department chairs and deans prior to creating electronically developed course materials for distributed learning in order to reach an agreement as to the appropriate category classification. It is understood that in some circumstances this category classification may change based on a modification in University support for the project.

1. Category I

a. **Totally Faculty or Staff Generated Course Materials**

The work resulted from an individual's efforts on personal time without any direct support from or through MSU and without the use of any MSU resources beyond those normally provided by the University. For examples, see Appendix I.

b. **Ownership and Compensation**

The individual owns all intellectual property, may receive compensation for work and retains distribution rights.

2. Category II

a. **Minimal University Resources**

The work resulted from the individual's efforts with minimal resources above and beyond those normally provided. For examples, see Appendix II.

b. **Ownership and Compensation**

The individual owns intellectual property and has the right to distribute the work. The University has a non-exclusive educational license to use the work as part of MSU course delivery. In such case, the faculty member will be compensated at a rate negotiated with the University or as otherwise agreed to by the University and the faculty member.

3. **Category III**

a. **Substantial University Resources Are Provided**

The work resulted from the individual's efforts with substantial University resources. For examples, see Appendix III.

b. **Ownership and Compensation**

The individual owns intellectual property and has the right to distribute it and receive compensation for any distribution outside the University course delivery. The University has a non-exclusive educational license to use the work as part of MSU course delivery. In such case, the faculty member will be compensated per student enrolled in a MSU course at a rate negotiated with the University. The University also has a non-exclusive commercial license to market the course outside the University. If licensed for commercial purposes either by the University or the faculty member, the University and the faculty member will each receive a percentage of the royalty as negotiated. In case of multiple authors, the authors will share the royalty pro rata based on their participation.

4. **Category IV**

a. **Work Made for Hire - University Assigns Duty to Faculty or Staff Member to Develop a Work**

An employee of the University was contracted to develop a specific product and the University provided all resources for the work. The work was carried out totally as part of the faculty or staff member's assigned time. For an example, see Appendix IV.

b. **Ownership and Compensation**

The University owns all intellectual property, has an exclusive educational and commercial ownership and license authority. The faculty or staff member is not entitled to payment of royalty.

5. **Category V**

a. **Faculty Member Uses Own Work as Part of Course Offering at MSU**

The faculty member is using a work that he/she created as part of teaching at MSU. For examples, see Appendix V.

b. **Ownership and Compensation**

Ownership will be determined by categories one through four. There will be no extra compensation beyond normal teaching compensation for use of the work.

6. Appendices

a. Appendix I - Examples of Category I

- 1) A faculty member in biology works with a publishing company to create a Web-based course. The publishing company provides 700 hours of instructional design and production support and the course is mounted on the company's server. All of the work is done on the faculty member's own time, but some of the development is done on weekends using the faculty member's office computer. MSU-licensed development software that is available throughout the department is also used. The course is mounted on a commercial server.
- 2) A professor in forensic psychology is approached by the publishing arm of a learned society to create a CD containing 2,000 images of evidence that this professor has photographed in preparing for classes over the years. The professor took the photographs on weekends using own camera and film, but on the department's copy stand. The learned society creates and markets the CD.

b. Appendix II - Examples of Category II

- 1) A faculty member works with Pearson, a Web course publishing company, to put the course, Regional Geography, totally on the Web. The University provides funds to purchase time from the University's Center for Media Production to videotape two hours of lecture to be streamed as part of the course. In addition, the University's Media Library checks out to the faculty member one of two digital recording workstations for a period of two weeks. Digital Inc. spends over 300 hours recording materials provided by the faculty member and creating the Web course, and mounts the course on their server. The faculty member works on the project almost exclusively on his/her own time.
- 2) An adjunct faculty member who teaches Introduction to Basic Computer Applications for the University volunteers to put half of the course on the Web. The University provides 30 hours of training on WebCT, the Web platform utilized. The university also provides twenty hours of assistance in creating a Power Point Presentation to be used as part of the course. The adjunct faculty member spends 200 hours creating the course on his/her own time. The course is mounted on the University's server.

c. Appendix III - Examples of Category III

- 1) A faculty member volunteers to make his/her department's Literature for

Children Course totally available on the Web. The faculty member is provided with a course release in the spring semester and paid for a course in the summer to develop the product, but also contributes some personal time. The University provides a substantial grant to purchase a digital camera to use in the project or a .5 FTE Web developer housed in the department for a semester to work with the faculty member. Personnel from the University Center for Distributed Learning records speakers for the class, digitize audio and video, totaling over 300 clock hours of production and support services. The course is mounted on the University's server.

- 2) The University's Executive MBA Program decides to offer the degree by taping courses and allowing employees of two corporations to download the courses to view on their own schedules. Three faculty members from the EMBA Program will rotate grading and answering questions for each course. A faculty member who teaches Human Resource Management volunteers to offer the first course. During the next year, this faculty member is given a course release each semester and is paid for two courses in the summer. The University funds production time in the Center for Media Production for the production of the tapes. The Center for Distributed Learning contributes significant hours in digitizing the tapes. The faculty member spends 60 hours over the year of his/her own time designing the course for television deliver. The University mounts the course on its server.

d. Appendix IV - Example of Category IV

The Chair of the Communications Department assigns a faculty member to a course that will be videotaped and broadcast the next year to sites in five school districts as part of a new master's program offered by the department. The faculty member is given course releases for the fall and spring semesters and is paid a task payment. All of the design and production work is done during working hours. The faculty member is assigned a .5 FTE research assistant for the academic year. The Center for Media Production contributes 250 hours in the design and production of the videotapes.

e. Appendix V - Examples of Category V

- 1) See Appendix II, Example (1) above. In this case, the faculty member might offer the course at MSU. The University would pay the previously negotiated fee to Digital, Inc. for access to the course materials, but this payment would not include compensation to the faculty member beyond the standard course compensation.
- 2) See Appendix III, Example (2) above. In this case, the faculty member might teach the course to students in the program. There would be no compensation

to the faculty member beyond the standard compensation for teaching the course. If the University used the materials with another faculty member, the faculty member who designed the materials would be compensated on a per student basis as negotiated with the University.

Responsible Office

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Revision History

11/07/2003 MSU Policy 3.140 (Intellectual Property Rights - Distance Education. Creation, Use, Ownership, Royalties, Revision and Distribution of Electronically Developed Course Materials.is adopted by the MSU Board of Regents as MSU Policy and Procedure. 3.140)