

An open letter on UW System Administration's proposed intellectual property policy

November 1, 2024

TO: UW System Board of Regents, UW System Administration, Faculty and Academic Staff Senates, and all other citizens of the UW System

From: Melanie Cary, President, United Academic Professionals of UW-La Crosse

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Neil Kraus, President, United Falcons of River Falls

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Daniel Levitin, Co-President, Teaching Assistants Association

Jon Shelton, President, UWGB-United

Stephanie Spehar, Co-President, United Faculty and Staff of Oshkosh

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The student-faculty relationship has long been a hallmark of a University of Wisconsin education. For decades, UW supported the development of meaningful student-faculty relationships by guaranteeing that faculty own and control the products of their work. Courses, syllabi, assignments, and instructional materials are unique products of the minds that craft them, and students go to UW schools to get educational experiences they cannot get anywhere else. By guaranteeing faculty ownership and control over the products of their labor, UW creates an environment in which one-of-a-kind faculty pour their minds, hearts, and souls into their classes to give students a one-of-a-kind education.

Now, the University of Wisconsin System is proposing to remove a key cornerstone of this world-class educational experience by eliminating faculty ownership of their syllabi, course materials, and other products of their labor. This proposal is a drastic and deeply problematic redefinition of the employment contract between faculty and UW, and it violates the longstanding principles of [American Association of University Professors \(AAUP\)](#), as outlined in their [guidelines on Copyright and Intellectual Property](#).

What does the current policy say?

[Existing policy \(UW System Administrative Policy G27/SYS191\)](#) explicitly asserts that, “The UW System does not assert a property interest in materials which result from the author’s pursuit of traditional teaching, research, and scholarly activities,” and that UW System could only assert ownership of such materials “through specific agreements with the authors and producers of the materials” (I. Background). The policy further distinguished five “developmental conditions” under which copyrightable material might be produced. It explicitly grants to faculty ownership of all materials produced with “no” or “minimal UW System or institutional support or involvement.” For work produced under the other three conditions (“substantial UW System or institutional support or involvement”; “as an assigned duty or pursuant to a work for hire agreement”; or “with support from an extramural sponsor”), the policy requires written agreements appropriate to each condition that outlines the ownership rights of various parties. (II. Policy, Sections B and C)

What does the new policy say?

[The proposed policy change \(UW System Administrative Policy 1310\)](#) eliminates all existing copyright language and replaces it with a new assertion that UW System holds copyright ownership of two forms of work done by the employee within the “Scope of Employment:” Scholarly Works and Institutional Works. (6, Policy Statement, Section A, II)

Institutional Work is defined as “a non-Scholarly Work created by an Employee acting within the Scope of Employment or using Substantial University Resources,” where “Substantial University Resources” is defined as those “not customarily or routinely available to Employees or Students for the development or production of teaching, research, or scholarship works.” By contrast, Scholarly Work is defined as “work created within the Scope of Employment as part of or in connection with a Designated Employee’s teaching, research, or scholarship duties.” (5, Definitions)

For Institutional Works, the policy directly claims that “copyright ownership in Institutional Work belongs to the UW System” (6, Policy, Section A, II, 2). **The new policy defines course syllabi as Institutional Works.** In the policy’s definition of “Scholarly Work,” it clearly states, “For the purposes of this policy, course syllabi are considered Institutional Works rather than Scholarly Works.” (5, Definitions) **Thus, under the new policy, the UW**

System claims intellectual property ownership of all syllabi produced by its employees.

For [Scholarly Works](#), the policy asserts that **copyright ownership originates with the UW System** but that “the UW System transfers copyright in a Scholarly Work to the Designated Employee(s) who authored the Scholarly Work subject to the Conditions of Transfer” (6, Policy, Section A, II, 1). **Under these Conditions of Transfer, the UW System “reserves the nonexclusive right to use... the copyrighted works for educational, research, and administrative purposes consistent with its educational mission and academic norms.”** It further reserves the right to “preserve, archive, and host the copyrighted works in institutional repositories where a copyright owner can control the timing and scope of access to copyrighted works.” (6, Policy, Section B)

Things specifically enumerated as examples of Scholarly Works under the proposed policy include “lecture notes, case examples, course materials, textbooks, works of nonfiction, novels, lyrics, musical compositions/arrangements or recordings, journal articles, scholarly papers, poems, architectural drawings, software, visual works of art, sculpture, and other artistic creations.” (5, Definitions) Thus, the UW System is claiming at least partial ownership of a broad, expansive list of the products of faculty and staff labor.

How does this compare to AAUP Principles?

Consultation between leadership of the American Federation of Teachers (AFT) and the American Association of University Professors (AAUP) confirmed that the proposed policy change is in violation long-standing AAUP principles concerning Copyright and Intellectual Property.

The [AAUP’s Statement on Copyright](#) affirms,

it has been the prevailing academic practice to treat the faculty member as the copyright owner of works that are created independently and at the faculty member’s own initiative for traditional academic purposes. Examples include class notes and syllabi, books and articles; works of fiction and nonfiction; poems and dramatic works; musical and choreographic works; pictorial, graphic, and sculptural works; and educational software, commonly known as ‘courseware.’

Furthermore, the [AAUP’s Statement on Intellectual Property](#) asserts that scholarly work should be protected from being used without their consent:

Standards should be set for the handling of faculty intellectual property rights in the design and subsequent use of instructional materials, including online courses.... Faculty lectures or original audiovisual materials, . . . unless specifically and voluntarily created as works made for hire, constitute faculty intellectual property. As components of faculty-designed online courses, they cannot be

revised, edited, supplemented, or incorporated into courses taught by others without the consent of the original creator. Nor can an online course as a whole be assigned to another instructor without the consent of the faculty member who created the course, unless, once again, the faculty member agreed to treat the course as a work made for hire with such ownership rights residing in the institution.

Summary

In short, **under the new policy, UW System claims ownership of every bit of Scholarly Work and Institutional Work done by faculty and staff as a routine part of employment, and it is in violation of existing policy, existing practice, and long-standing traditions and principles of higher education.** Although the policy claims that UW System “transfers” ownership of Scholarly Work to the employee, it nonetheless retains the right to do whatever it wants with the products of employee labor, as long as it is “consistent with its educational mission and academic norms.”

This policy change is nothing less than a drastic redefinition of the employment contract, one that represents a massive seizing of our intellectual property on a grand scale. It contradicts both the spirit and the letter of existing policy, and it redefines the student-faculty relationship. It would allow any UW campus to fire any employee and nonetheless continue teaching their courses in perpetuity and with no obligation to continue paying the employee for their work. Furthermore, it threatens to dehumanize the UW educational experience by undermining the unique student-faculty relationships that emerge organically at our campuses and replacing them with cookie-cutter online courses graded by low-wage employees or AI robots.

Remedy

We therefore strongly urge the UW System to reverse course and revise the policy to preserve existing principles and practices. The new policy should state plainly that the UW System does not assert a property interest over Scholarly Works and that ownership of Scholarly Works resides solely with the author. Failure to do so will be widely interpreted by staff and faculty as an act of intellectual property theft and as a sign of disrespect, and we will consequently be impelled to re-think the conditions under which we share access to our intellectual property with university platforms such as Canvas and other course learning management software. The possibilities include withholding lecture notes from course learning platforms, using alternative, open-access online learning platforms for course instruction instead those provided by the university, and even potentially declining to teach online classes entirely.

Further, we urge all UW Chancellors, Faculty Representatives, Staff Representatives, and Shared Governance bodies to express their opposition to this proposed policy change to the UW Board of Regents.

Finally, we urge all UW employees to visit the Draft Policy webpage and make an official comment opposing this policy change. Deadline: November 19, 2024, 5:00 p.m

1. Visit: <https://www.wisconsin.edu/uw-policies/uw-system-administrative-policies/copyrightable-instructions-materials-ownership-use-and-control-2/>
2. Then, log in with your UW log-in credentials;
3. Then, click “Submit and View Comments”

Sincerely,

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