



FAQ: COPYRIGHT OWNERSHIP & ONLINE COURSE MATERIALS

INTRODUCTION

Many universities' policies and customs provide that professors have full copyright ownership in the traditional academic materials they create, such as syllabi and lesson plans. However, this arrangement may differ for *online* course materials. For example, universities may assert ownership over copyrights in materials that are created for online presentation outside of the confines of the traditional classroom or academic term. As such, materials produced for an online class, a hybrid course taught over the summer, or for a project with a third-party provider may be subject to different rules. Since the shift to a virtual learning environment brought on by the COVID-19 pandemic has prompted faculty at many universities to create new course materials to facilitate distance learning, many faculty authors have questions about who owns the copyrights in these materials. Because the allocation of copyrights affects how course materials can be used, modified, and shared, it is important for faculty to have clarity about copyright ownership in the materials they create.

This FAQ answers common questions faculty may have about how to determine who owns copyrights in the materials they create for online courses, as well as whether and how uses of those materials may be limited. It is for faculty who have created or will create online course materials and want to understand their rights under their faculty contracts, university policies, and other agreements with their institution. It provides faculty with the information they need to navigate the terms that govern copyrights in the online course materials they create and provides resources for learning more about the copyright issues involved.

This FAQ addresses U.S. copyright law. It does not address other areas of law, including privacy, trademark, and state law issues. This FAQ is not legal advice nor does using this FAQ create an attorney-client relationship. Please consult an attorney if you would like legal advice about your rights, obligations, or individual situation.

Authors Alliance is grateful to Harry Levin and Elise Widerlite, student attorneys at Georgetown Law practicing D.C. law pursuant to D.C. App. R. 48 under the supervision of Amanda Levendowski and Nina Srejovic, for researching and authoring this FAQ.

This FAQ has three parts. **Part I** provides an introduction to online course materials and copyright as it relates to those materials. **Part II** explains how course agreements can shape how you and your university can use, modify, and share online course materials. Finally, **Part III** provides additional guidance and resources. To get the most out of the FAQ, you may wish to have your institution’s intellectual property policies, your employment contract(s), and any project-specific contract(s) in hand.

PART I: Online Course Materials & Copyright..... 3

- 1. What are online course materials? _____ 3
- 2. Are online course materials protected by copyright? _____ 4
- 3. Where can I find the contractual terms that govern copyright ownership in the online course materials I created? _____ 4
- 4. What rights are included in copyright? _____ 6
- 5. Do faculty always own and control copyrights in the online course materials they created? ____ 6
- 6. How do I know if I created a work made for hire? _____ 7
- 7. How do I know if I assigned my copyright? _____ 8
- 8. How do I know if I am a co-owner of copyrights in a joint work? _____ 9

PART II: Using, Modifying & Sharing Online Course Materials 10

- 9. My university is the copyright owner of the online course materials I created. Do I have permission to use the online course materials? _____ 10
- 10. I am the copyright owner of the online course materials I created. Does my university have permission to use the online course materials? _____ 11
- 11. Can I grant permission to others to use online course materials that I created? _____ 12
- 12. Can others use my online course materials without a license? _____ 13
- 13. Can a license be limited to certain uses? _____ 13
- 14. Can I use the online course materials I created for the same class at another university? ____ 14
- 15. Can my ability to incorporate another person’s materials into mine, including text and images, be restricted? _____ 15
- 16. Can my university use materials I created in a future version of the course? _____ 16
- 17. Can my university update or modify the online course materials I created? _____ 17
- 18. I removed copies of the online course materials I created from my university’s online platform. Does this prevent my university from using these materials? _____ 18
- 19. Can I restrict who can access the online course materials I created and when they can access them? _____ 18

PART III: Further Resources19

- 20. Whom can I approach to learn more about the rights related to the online course materials I created? _____ 19
- 21. My institution is reviewing its intellectual property policies. What rights in online course materials should faculty try to retain? _____ 19
- 22. Are there other resources that can help? _____ 20

Endnotes..... 22

PART I: ONLINE COURSE MATERIALS & COPYRIGHT

1. What are online course materials?

For purposes of this FAQ, the term “online course materials” refers to any original expression created by a member of an institution’s faculty and fixed in some form that facilitates online learning. Online course materials may include, but are not limited to:

- ✓ Written materials (e.g., syllabi, lesson plans, and slides);
- ✓ Recorded lectures;
- ✓ Recorded group discussions;
- ✓ Interactive materials (e.g., polls, surveys, and quizzes);
- ✓ Computer code and online tools.

Universities may define “online course materials” in the agreements that govern copyrights in the online course materials you created. To find out which types of materials are covered by your institution’s policies and/or your contract(s) with your institution, look for phrases in these documents such as “online courseware,” “content for web-based learning,” or “materials created for the online course.” In general, “online course materials” is a broad term that will cover any copyrighted work created in connection with an online course. For example:

- “All copyrightable works, of whatever kind and created as part of the development of the above-referenced course or project.”

Even contractual clauses that provide examples of materials that are “online course materials” are likely to be non-exhaustive, meaning that other, similar types of copyrighted materials that are created in connection with the online course but are not explicitly included in the list likely are included in the definition. To determine whether a contractual definition of online course materials is non-exhaustive, look for language such as “including,” or “including but not limited to.” For example, a non-exhaustive definition of online course materials may say something like:

- “Course materials shall mean materials provided by the Instructor to be used in connection with the Course. Course materials may include lecture notes, syllabi, study guides, assessments (tests and quizzes), bibliographies, visual aids, images, diagrams, multimedia presentations, web-ready content, and educational software.”

[\(Back to top\)](#)

2. Are online course materials protected by copyright?

Almost all online course materials are eligible for copyright protection. The instant an original, creative work is created and fixed in a tangible medium of expression, the work is [automatically protected](#) under U.S. copyright law. For example, if you jot down some notes about course design, write a syllabus, record a lecture on Zoom, or create a graphic for a presentation, you almost certainly will have created a copyrightable work. The work does not need to be formally registered with the U.S. Copyright Office in order to be eligible for protection, but registration [provides benefits](#) in some circumstances. Copyright protections also [last beyond the author's death](#). This means online course materials may be protected by copyright even [after the author passes away](#). More detailed information on copyright duration is available on in the U.S. Copyright Office's [circular](#) on copyright duration.

Copyright protection is not unlimited in scope, which means that some online course materials may not be protected by copyright. An important category of things that are not copyrightable are facts—even if those facts are obscure or were difficult to collect. However, the selection, coordination, and arrangement of a “compilation” of facts may be protected. For this reason, a course reading list may be [copyrightable as a compilation](#) of suggested readings that have been selected, coordinated, and arranged. Ideas are [also not eligible for copyright protection](#). Therefore, your idea for a class activity cannot be protected by copyright, though the specific way you express the concept for the activity in writing may be protected. Finally, short phrases and titles are not protected under U.S. copyright law. For example, a course name, such as “Introduction to Economics,” is not copyrightable.

[\(Back to top\)](#)

3. Where can I find the contractual terms that govern copyright ownership in the online course materials I created?

There are a variety of contracts and policies that may have bearing on copyright ownership in online course materials. Some common places to find the terms that govern the copyrights in the online course materials you created are employment contracts, university intellectual property policies, and agreements concerning a particular course or courses. Copyrights in the online course materials may be discussed in more than one of these documents, and some contracts or policies may cross-reference each other, so it is important to identify all of the documents that implicate your copyrights in order to understand your ownership rights in online course materials.

A general contract, such as an employment contract or a signed job offer letter from your institution, may discuss copyright ownership in course materials generally and/or online course materials specifically. It is not uncommon for an employment contract to incorporate a university intellectual property policy by reference. When an employment contract incorporates an intellectual property policy by reference, the policy functionally becomes a part of the contract, even though the contract itself does not include the same language. University intellectual property policies can go by many names, including “Policy on Intellectual Property Rights,” “Policy on Online Courseware,” “Copyright Guidelines for Electronic Course Content,” “Mediated Courseware Policy,” and “Copyright Ownership Policy.” Sometimes, a university’s intellectual property policy may be included in a faculty handbook. A contract that incorporates a university intellectual property policy by reference might say something like:

- “The Author will own the copyright to the extent permitted by University Policy on Ownership of Course Materials.”

Alternatively, especially if you teach an online class outside of the scope of your normal teaching duties, you may be asked to sign a new contract that allocates rights for the online course materials you create for that course, which may also incorporate university intellectual policies or other agreements by reference. These course agreements may cover only materials produced for a specific class, or may cover a group of materials produced for distance learning in general. Agreements for a specific course may include language like:

- “This agreement includes the development of online course materials for the Course identified above.”
- “This is to set forth our understanding of the terms and conditions by which you will develop the distance version of Econ 101 (‘the Course’).”

You may not have a contract, university policy, or other agreement that deals specifically with online course materials because some universities do not require faculty to sign new contracts before teaching an online course, or may not have policies that distinguish regular course materials from online course materials. In this case, contract terms or policies governing course materials generally may be broad enough to apply to online course materials.

If you cannot find the contract or policies that govern copyrights in online course materials, you might consider talking to your institution’s human resources department, a librarian at your university who specializes in copyright, or a designated copyright advisor within your institution. For additional resources on places to go to help you understand your rights and responsibilities regarding online course materials you created, please see [Question 20](#).

[\(Back to top\)](#)

4. What rights are included in copyright?

Copyright law gives authors [six exclusive rights](#). Typically, the “author” is the individual or individuals who created a work, but in some cases the employer or commissioning party is considered a work’s author under the “work made for hire” doctrine. Please see [Question 6](#) to help you evaluate whether this doctrine applies to the online course materials you created.

The six exclusive copyrights are the rights to (1) reproduce the work, (2) make derivative works, (3) distribute copies of the work, (4) publicly perform the work, (5) publicly display the work, and (6) perform the work through digital audio transmission (for sound recordings). By way of example, the exclusive rights give the author of a PowerPoint presentation the right to do any of the following:

- ✓ Reproduce or create a copy of the presentation by uploading it to the university’s online course page;
- ✓ Create a derivative work by adapting the presentation into an asynchronous lecture by adding audio;
- ✓ Distribute copies of the presentation to students;
- ✓ Publicly perform the work by replaying the recorded lecture; and
- ✓ Publicly display the presentation on a personal webpage or on social media.

Copyrights may be granted to others and split up in a multitude of different ways, either by assignment or through exclusive or non-exclusive licenses. When one party holds the exclusive right to exercise certain rights, others are unable to exploit these rights without infringing the owner’s copyright, unless the use falls under a limitation or exception to copyright. The questions and answers that follow explain how a copyright owner may grant some of the exclusive rights (or a part of an exclusive right) to others.

[\(Back to top\)](#)

5. Do faculty always own and control copyrights in the online course materials they created?

No. Faculty do not own the copyrights in the online course materials they create if the materials are a “work made for hire” or if the faculty member assigns their copyrights in full to another party. Additionally, even if faculty own the copyrights in the online course materials they created, they may not control all of these copyrights if they co-own the copyrights, or if they license or assign some of the rights to another party.

Sometimes, copyrights in a work will automatically vest with a person or entity other than the individual who created the work. Under the “[work made for hire](#)” doctrine, the employer (or commissioning party) owns the copyrights from the point of creation. In the academic context, this means that a university-employer would automatically own copyrights in materials created by the faculty-employee from the moment of creation. Please see [Question 6](#) to help you evaluate whether this doctrine applies to the online course materials you created.

Authors may also transfer copyrights to another party through assignment, the permanent transfer of some or all ownership rights under copyright to another party. When an author assigns one or more of her exclusive rights under copyright, the author no longer owns the parts of the copyright that were assigned and can no longer exercise those rights or license them to someone else. Unlike a license, which allows other parties to use, but not own, particular rights under copyright, an assignment transfers the ownership interests in those rights. Please see [Question 7](#) to help you evaluate whether you assigned the copyrights to your online course materials.

Even if you determine that you do own the copyright in the online course materials you created, you may share this ownership with another party or parties, and this can affect what you can do with the materials. For more information on how to determine whether this situation applies to the online course materials you created, please see [Question 8](#).

In copyright law, a license is an agreement that allows a party other than the copyright holder to exercise certain, delineated rights under copyright. Even if you are *not* the copyright owner of the online course materials you created, you may still have a license to use these materials. Likewise, if you *are* the copyright owner of the online course materials, you may grant a license to others to use the materials. For more information on these situations, please see [Question 9](#) and [Question 10](#).

[\(Back to top\)](#)

6. How do I know if I created a work made for hire?

[Works made for hire](#) are created either by (1) employees within the scope of their employment, or (2) as a commissioned work with a signed contract. If online course materials are “works for hire,” copyright ownership vests with the employer or commissioning party, not the faculty member who created the online course materials. If you are not an employee of the academic institution, and you do not have a signed contract, you have not created a work made for hire.

First, under current copyright law, if an employee creates materials within the scope of her employment, the employer typically owns the copyright as a work made for hire. However, courts disagree about what counts as the “scope of employment” in academia,¹ and, in any case, this rule is often upended by custom, policy, and practice in the academic context. As a result, many institutions do not claim ownership of traditional course materials, and this may be made explicit in your contract, university policy, or other agreement.² For example, in the following university intellectual property policy, the university clarifies that it does not seek to claim ownership of course materials:

- “This policy is not intended to disturb the customary relationship between the University and the Author of works of traditional scholarship, including course materials and artistic works. In general, the University does not claim ‘work made for hire’ status for these works.”

That said, customs, policies, and practices at each university may differ, as does the treatment of online (versus traditional) course materials. It is therefore important for faculty to understand whether or not online course materials are treated as works for hire at their institution. For example, while some universities may not claim work made for hire status for most course materials, they may view faculty-created material as a work made for hire if the faculty use “significant university resources” in the preparation of the material. “Significant university resources” are typically those beyond customary library facilities, office space, and administrative support provided by the university, but may include the extra technical and production support required to produce some online course materials. Although the university does not need to make the work made for hire status clear in a contract or agreement for a work to be deemed a work made for hire, sometimes these documents will make this clear for the avoidance of doubt. For example:

- “The Author agrees that any copyrightable works that the Author may create for the online course shall be regarded as ‘works made for hire’ under the United States Copyright Act.”

Second, a work made for hire can be commissioned by a signed writing if it is one of nine types of commissioned works (such as instructional texts, tests, and answer material for tests). The complete definition of a commissioned work made for hire is provided in the [Copyright Act](#) and discussed in this [short Copyright Office guide](#). Because a signed writing is required under the Copyright Act for a commissioned work made for hire, an unsigned university intellectual property policy that is not incorporated by reference into a signed contract is very unlikely to create a commissioned work made for hire on its own.³

[\(Back to top\)](#)

7. How do I know if I assigned my copyright?

Look for a signed contract with your institution. Under the Copyright Act, to assign a copyright, the copyright owner must have a [signed writing](#). You may have an employment contract with your institution that discusses intellectual property rights and assignment, or you may have signed a course agreement that deals with these topics. University policies that are not signed by individual faculty members, cannot, on their own, assign a copyright, although an unsigned university intellectual property policy may be incorporated by reference into a signed contract or course agreement and therefore effectuate an assignment.⁴

If you have assigned the entire copyright in your online course materials to someone else, like your university, you have given this other entity all of your exclusive rights under copyright. An assignment clause may say something like:

- “The Author hereby assigns and transfers any copyright interest in the Works to the University.”

[\(Back to top\)](#)

8. How do I know if I am a co-owner of copyrights in a joint work?

Under the Copyright Act, more than one author may share ownership of the copyrights in a work from the moment of creation. These works are called “[joint works](#).” To evaluate whether you are the co-owner of copyrights with another party or parties based on the fact that the work is a joint work, you will need to examine the facts and circumstances surrounding the creation of the work. Under copyright law, when two or more authors have prepared a work with the intention that their contributions be merged into a single work, that work is a joint work. For example, if you and a colleague co-teach a course and prepare the syllabus together, the syllabus may be considered a joint work. A university could also be considered a co-author that jointly owns a copyright if both you and the university contribute material with the intent that the content is merged into a single work. For example, if the university provided a PowerPoint template, and you used the template to create slides for an online course, the slides may be considered a joint work over which the university may claim co-ownership. However, co-ownership of a joint work is a complex, fact-intensive inquiry that may depend on the state where you work.⁵ For more information, consider consulting one of the resources in [Question 20](#).

Owners of a joint work own the copyright jointly and equally unless there is an express agreement otherwise, meaning any co-owner can exercise any or all of the six exclusive

rights under copyright law. As a co-owner, you can also transfer your ownership interest in the work through an assignment, or you can grant others non-exclusive licenses to make specific uses of the work (because the other joint owners can also exercise exclusive rights under copyright, you cannot unilaterally grant an exclusive license in this situation). Consent from all owners is needed in order to grant an exclusive license or assign the copyright in its entirety to a third party, and you can generally withhold consent from such arrangements as a co-owner.

[\(Back to top\)](#)

PART II: USING, MODIFYING & SHARING ONLINE COURSE MATERIALS

9. My university is the copyright owner of the online course materials I created. Do I have permission to use the online course materials?

Maybe. Copyright owners can grant [exclusive or non-exclusive licenses](#) to other parties, including to the person who created the materials. These licenses allow the licensee to exercise certain, delineated rights under copyright, and can be granted expressly in a written agreement. Non-exclusive licenses can also be granted by implication through the parties' behavior.

An exclusive license permits only the licensee to exercise a particular right. For example, book authors may grant an exclusive license to a publisher for the right to distribute the books. This means the publisher can distribute copies of the book, but others, including the copyright owner-author, may not distribute copies. If your university is the copyright owner of the online course materials that you created, it is unlikely that it will grant you an *exclusive* license to use the online course materials. This is because when the copyright owner grants an exclusive license to another party, the owner loses the ability to exploit the relevant right(s) and may not grant permission to others to use the materials. Because the university has an interest in continuing to use the online course materials, it likely will be reluctant to grant you an exclusive license.

If your university is the copyright owner of the online course materials that you created, it is much more likely that it will grant you a *non-exclusive* license to use the online course materials. When the copyright owner grants a non-exclusive license for a particular copyright,

the owner can still exploit that right, and may be able to grant other licenses authorizing the use of the same right, depending on the terms of the license. Here is an example of a contract term that grants a non-exclusive license to the creator of the online course materials where the university owns the copyright as a work made for hire:

- “The University hereby grants to the Author a non-exclusive, royalty-free license to use any works created within the scope of employment.”

Your university may also expressly grant you a non-exclusive license in a university intellectual property policy or course agreement. Copyright owners may also grant implied non-exclusive licenses through behavior. For example, if you request the university PowerPoint template to make slides for your online course, and the university sends you the template in response to the request, the university likely grants an implied license to you to distribute the slides in connection with your class. For more information about implied licenses, visit our [Implied License](#) blog post.

[\(Back to top\)](#)

10. I am the copyright owner of the online course materials I created. Does my university have permission to use the online course materials?

Maybe. Copyright owners can grant [exclusive or non-exclusive licenses](#) to other parties. These licenses allow the licensee to exercise certain, delineated rights under copyright, and can be granted expressly in a written agreement. Non-exclusive licenses can also be granted by implication through the parties' behavior.

An exclusive license permits only the licensee to exercise a particular right. For example, book authors may grant an exclusive license to a publisher for the right to distribute the books. This means the publisher can distribute copies of the book but others, including the copyright owner-author, may not distribute copies. If you are the copyright owner of the online course materials that you created, you may have granted your university an *exclusive* license to use the online course materials. If you have, you may not have the right to use the online course materials that you created. This is because when the copyright owner grants an exclusive license to another party, the owner loses the ability to exploit the relevant right(s) and may not grant permission to others to use the materials. That said, universities typically have an interest in continuing to use the online course materials, but no interest in excluding your use, making it unlikely that a university would insist on an exclusive license. Moreover, granting the university the exclusive right to the online course materials you created would

limit your ability to use the materials. For these reasons, exclusive licenses are not typical for online course materials.

If you are the copyright owner of the online course materials that you created, you may have granted your university a *non-exclusive* license to use the online course materials. When the copyright owner grants a non-exclusive license for a particular copyright, the owner can still exploit that right and may be able to grant other licenses authorizing the use of the same right, depending on the terms of the license. In some cases, it may be in your interest to grant the university a non-exclusive license. For example, a non-exclusive license could allow the university to select a new instructor to use the online course materials to teach the course in the event you were unable to continue teaching in the middle of the semester. Non-exclusive licenses can be granted expressly in a contract, a university intellectual property policy, or another agreement.

An agreement granting the university a non-exclusive license from your copyright may say something like:

- “The University shall enjoy a permanent non-exclusive, royalty-free license to make all traditional, customary, or reasonable academic uses of the immediate content of that course.”
- “The Author hereby grants to the University a non-exclusive, perpetual, irrevocable, royalty-free license with the right to copy, distribute, perform, display, modify, and create derivative works in all mediums either now known or developed in the future.”

Copyright owners may also grant implied non-exclusive licenses through behavior. For example, if the university requests PowerPoint slides for a student resource kit and you send your PowerPoint slides in response to the request, you likely grant an implied license to the university to distribute the slides in connection with the resource kit. For more information about implied licenses, visit our [Implied License](#) blog post.

[\(Back to top\)](#)

11. Can I grant permission to others to use online course materials that I created?

Yes, as long as you are the copyright owner and do not convey a right that you do not actually own. You may also be able to grant others permission to use the online course materials if the university is the copyright owner but has granted you a license that permits granting permissions. If you own a particular right under copyright and have not already given an exclusive license to another party to exploit that right, you can typically grant permission,

or a license, for someone else to exercise that right. In fact, many faculty members share their teaching materials within the academic community because they think it strengthens academic resources. Some faculty members who own the copyrights in their works release their course materials under open access licenses, which typically allow others to use the materials as long as they attribute the work to the original author (potentially with other conditions of use, as dictated by the particular open access license selected by the faculty member). For more information on open access licenses, see our [Open Access Resources](#) and additional information about [Creative Commons licenses](#).

As a rule, you cannot convey a right that you do not have. This occurs most often when the author is not the copyright owner because the work is a work made for hire, or if the author has already assigned or exclusively licensed that right to someone else. Imagine you create online course materials and share them with your colleague. If these online course materials are works made for hire owned by the university, then unless you have a license do so, you cannot authorize your colleague to use them in her course because the university is the copyright owner and you therefore do not own distribution or display rights. In fact, unauthorized sharing with a colleague could constitute infringement of the university's copyright in the online course materials, so you should take care to ensure you are not exercising or licensing a right you do not control. On the other hand, if you are a co-owner of a copyright, you can grant others permission to use the online course materials you created in the form of a non-exclusive license. For more information on co-ownership of copyrights, please see [Question 8](#).

[\(Back to top\)](#)

12. Can others use my online course materials without a license?

In certain circumstances, another party may be able to use your online course materials without a license. Other parties, such as the university or a third party, may not need a license if the use is permitted by [fair use](#). Whether fair use applies depends on the (1) purpose and character of the use, (2) nature of the copyrighted work, (3) amount of the work used, and (4) effect on the potential market for the work. In general, fair use is a fact-sensitive determination, so consider reviewing our [Fair Use Resources](#) or talking to a librarian at your institution who specializes in copyright issues to learn more.

[\(Back to top\)](#)

13. Can a license be limited to certain uses?

Yes. The copyright owner can, in addition to licensing particular, delineated rights under copyright, grant a license that allows only particular, delineated *uses* of a work. Licenses limited to particular uses can be exclusive or non-exclusive. For more information on the rights a copyright owner can grant using a license, please see [Question 4](#). Note that all rights not granted by a license remain with the copyright owner.

If you are the copyright owner, contractual terms governing the rights to your online course materials may give your university a license for limited uses. For example, these terms might permit the university to make derivative works only for the purposes of making the content compatible with new technology, translating it into foreign languages, or making the material accessible to students with disabilities. This kind of license is more restrictive than a non-exclusive license to make derivative works because derivative works can only be created for the three stated purposes. In this example, the right to make others types of derivative works would remain with the copyright owner. The license may say something like:

- “The license includes the ability to make derivative works when reasonably necessary in order to make Course Materials compatible with the Platform, to translate materials into a foreign language, or to make materials accessible to people with disabilities.”

As another example, the terms might give the university the right to provide access to your online course materials, but may limit this access to certain scenarios. Such a license may say something like:

- “Any access to archived recordings shall be for private scholarly purposes only.”

A university-copyright owner can also use a license to permit certain uses of the online course materials that a faculty member who created the online course materials can make, but prohibit others. For example, a university that is the copyright owner may grant a faculty creator a license to reproduce online course materials *for scholarly purposes*, but retain the right to reproduce the materials for *commercial purposes*.

Because a contract can divide up copyrights through licenses and assignments in myriad ways, it is important to carefully read the terms governing rights to the online course materials you created in order to understand what rights you and the university have in the online course materials (and in what contexts they can be used).

[\(Back to top\)](#)

14. Can I use the online course materials I created for the same class at another university?

Maybe. If you created online course materials for instruction at one university and later begin teaching at another university, you may want to use the original online course materials to teach the same class at the new university. To do so, you would likely need to engage in activities that implicate a copyright owner's exclusive rights, like the rights to reproduce, distribute, and publicly display the materials. Therefore, you would either need to be the copyright owner or have a license to use the online course materials in this way (unless the use is otherwise permitted under an exception or limitation to copyright, such as fair use). Depending on how these rights were allocated in your contract, university policies, or other agreements, you may not be able to use the online course materials for an online course at your new university. For example, a contract that prohibits the use of the materials at a different university may say something like:

- “The Author will not use, copy, distribute, display, perform, license, or make derivative works of the Work in connection with the delivery of online courses offered by any third party.”

[\(Back to top\)](#)

15. Can my ability to incorporate another person's materials into mine, including text and images, be restricted?

Yes. It is possible that a contract, university policy, or other agreement includes language that restricts a faculty member's ability to use third-party materials in her online course materials. Some contracts, policies, and other agreements prohibit faculty from relying on an exception to copyright like fair use when incorporating third-party material into online course materials and instead require that authors always secure permission or a license. More commonly, an institution will require that an author comply with specified copyright clearance policies when using third-party materials to avoid unintentional infringement.

Even if your course agreement does not specify whether you can rely on fair use or what steps you must take to avoid infringing third-party copyrights, your contract, university policy, or other agreement may require you to warrant that the online course materials do not infringe another's copyright. The contract may say something like:

- “The Author hereby warrants that all work produced is original to the Author and has not been copied or adapted from any other source in violation of the intellectual property rights of any third party.”

The contract may also require the author to indemnify the university for any claims of copyright infringement related to the use of the work. An indemnification clause may require the author to reimburse the university for any cost it incurs related to an infringement lawsuit. An indemnification clause may say something like:

- “To the extent permitted by law and policy, the Author agrees to hold harmless and indemnify the University against any claim, demand, suit, action, proceeding, recovery, or expense of any nature whatsoever arising under this Agreement, including claims of infringement of copyrights or proprietary rights resulting from the University’s use, publication, and distribution of the Work.”

[\(Back to top\)](#)

16. Can my university use materials I created in a future version of the course?

Maybe. Using the online course materials you created in a future version of the course would involve activities which implicate a copyright owner’s exclusive rights, such as distribution and display rights. The institution likely has the right to use the materials in future versions of the class if it owns the copyright outright, but if the university does not own the copyright, it would need a license from the owner in order to use the materials in future versions of the course (unless the use is otherwise permitted under an exception or limitation to copyright, such as fair use).

A license that grants the university the right to distribute the online course materials may say something like:

- “The Author hereby grants to the University a non-exclusive license to distribute the Work.”

A license may also be more specific about uses in future classes and say something like:

- “The License also shall include a right in the University to offer the course, or to develop and offer derivative courses of instruction, in both conventional and non-conventional settings.”

[\(Back to top\)](#)

17. Can my university update or modify the online course materials I created?

Maybe. In general, the copyright owner can prevent others from modifying material to the extent that the modification creates a [derivative work](#). For example, a version of online course materials that have been translated into another language is an example of a derivative work that may infringe the copyright owner's right to create derivative works, absent a license authorizing this use or an exception to copyright. If you are the copyright owner and your contract, university policies, or other agreements do not have language that allows your university to update or modify the online course materials, your university may be limited in its ability to do so.

That said, even if the faculty member is the copyright owner, many contracts, university policies, or other agreements permit the university to update or modify the online course materials. A clause that allows the university to update or modify the online course materials you created may say something like:

- “Either Author or University may initiate substantial updates to the Work.”
- “The Author hereby grants to the University a non-exclusive, perpetual, royalty free, irrevocable license to modify the Work.”

On the other hand, your contract, university policies, or other agreements may prohibit modifications of the materials by anyone other than the faculty member who created the online course materials, unless the faculty member gives their consent. In this case, the clause may say something like:

- “The materials shall not be modified without the consent of the creator(s).”

Sometimes, a contract, university policies, or other agreements will give the faculty member the first option to update the online course materials but permit the university to make these updates should the author decide not to undertake the revisions. Such a clause may look like:

- “The University may request periodic revisions of the materials. Should the Author elect, upon invitation, not to make the requested revisions, the University may engage a qualified expert for this purpose.”
- “The Author will have the first option to create any substantial content updates to the Work.”

Minor modifications, like changing a data table on one of your slides from horizontal to vertical, are unlikely to create a derivative work, and may even be explicitly allowed under the agreement. For example:

- “Minor updates to the Work will be made at the discretion of the University.”

Finally, some online course agreements provide the right to disassociate when significant updates are made to the materials. The clause may say something like:

- “In the event that the Work is substantially updated by the University in collaboration with a party other than the Author, Author at his or her election may choose to disassociate him or herself from the revised Work or portions thereof.”

[\(Back to top\)](#)

18. I removed copies of the online course materials I created from my university’s online platform. Does this prevent my university from using these materials?

Not necessarily. As the creator, you are not necessarily the copyright owner of the online course materials, and possession of files containing the materials (or lack thereof) does not change copyright ownership. For example, if you write a manuscript, hand the physical copy of the manuscript to your publisher, and assign the copyright in the work to the publisher in your publication contract, the publisher now owns the copyright. If the publisher returns the physical copy of the manuscript to you, just because you now possess the manuscript, this does not mean you are the owner of the copyright. Similarly, even if you possess the only copy of the online course material, the university may hold rights to it as a copyright owner or licensee.

[\(Back to top\)](#)

19. Can I restrict who can access the online course materials I created and when they can access them?

Sometimes. You can restrict access to your materials when you hold the exclusive right to distribute the materials, either as a sole copyright holder or exclusive licensee. In the first scenario, because the copyright owner has the exclusive right to distribute the materials, the copyright owner may restrict access by limiting distribution. However, if the copyright owner is a co-owner or grants a distribution license to others, it will be difficult to unilaterally restrict access, since co-owners and licensees will also be able to distribute the materials. An online

course agreement that grants the university a license to distribute the online course materials may say something like:

- “The Author hereby grants to the University a non-exclusive license with the right to distribute the Work in all mediums now known or developed in the future.”

Just because a license grants another party the right to distribute materials, it does not mean that party is required to continue to distribute the materials. However, a license can give the copyright owner the right to terminate distribution rights in the event the online course materials are no longer being made available. For example:

- “The University reserves the right not to distribute the Course, or after the Course has been distributed, to discontinue distribution of the Course, for any reason at its sole discretion. If the University chooses not to distribute the Course, it will inform the Author, and Author will have the right to terminate the license immediately by providing written notice.”

[\(Back to top\)](#)

PART III: FURTHER RESOURCES

20. Whom can I approach to learn more about the rights related to the online course materials I created?

If you want to learn more about the rights related to the online course materials you created, you might start by asking your human resources department to help you identify the contracts, policies, and other agreements that govern the rights to these materials. You might also approach someone at your institution who specializes in copyright issues, often affiliated with the academic library. These individuals, sometimes called Scholarly Communications Officers or Copyright Librarians, can help you learn more about copyright law in general and provide additional resources to address your specific needs. Finally, someone in the administration, sometimes called the Campus Copyright Officer or Copyright Counsel, may be able to provide additional information about the terms of the contracts, policies, and agreements at your institution.

[\(Back to top\)](#)

21. My institution is reviewing its intellectual property policies. What rights in online course materials should faculty try to retain?

It depends on your specific needs and goals. In general, it is prudent for faculty to pay careful attention to how rights are allocated in their contracts, university policies, or other agreements. Some rights that faculty may prefer to retain include:

- ✓ The right of attribution, so that their name is associated with the course materials in the future;
- ✓ The right to distribute their materials to enable sharing with colleagues and use at another university;
- ✓ The right to update the materials to control how new scholarship is reflected in their work;
- ✓ The right to present, particularly for recorded lectures;
- ✓ The right to distribute materials for commercial use by third parties to control commercialization.

That said, rights to online course materials can be sliced and allocated in an infinite number of ways, and there is no correct way to allocate rights.

Collective action with other faculty members, either by union or through the Faculty Senate, is one way to try to retain or modify these rights. Most universities have a faculty governing body, sometimes called the Faculty Senate, Faculty Congress, or Academic Senate. These bodies are often responsible for crafting academic policies and advising university leadership on a range of issues. In some cases, they may be able to provide resources or advocate on behalf of faculty. For example, recently, a group of faculty [successfully convinced](#) one university to reconsider terms that limited faculty ownership. The university had adopted a new university intellectual property policy that stipulated that the university owned all copyrights in courseware and online modules, even in the absence of a formal ownership agreement. A group of faculty members urged the university to revise the policy, and the university ultimately clarified that it would not “reuse or commercialize” copyrighted materials without a faculty member’s written consent. Further, the university clarified that faculty would continue to own “instructional copyrighted works,” including lecture notes, syllabi, lab instructions, problem sets, and exams.

[\(Back to top\)](#)

22. Are there other resources that can help?

Yes. There are a number of [copyright resources](#) available on the Authors Alliance website if you are interested in learning more about copyright law. In particular, our [Copyright Fundamentals](#), [Fair Use](#), and [Open Access](#) resource pages provide a good starting point for learning more about these topics. Also consider the American Association of University Professors' [Pandemic Resources Guide](#) for additional frequently asked questions.

[\(Back to top\)](#)

ENDNOTES

¹ Historically, there has been a teacher exception to a work made for hire for teaching materials made within the scope of employment. See Copyright Act of 1909, ch. 320, § 62, 35 Stat. 1075, 1088 (establishing protection for “work made for hire,” but not defining the term); *Sherrill v. Grieves*, 57 Wash. L. Rep. 286 (D.C. 1929); *Williams v. Weisser*, 78 Cal. Rptr. 542 (Cal. Ct. App. 1969); see also Kathryn Mills, *Comment, Teachers Creation of Nontraditional Educational Works: To Rely on the Teacher Exception or Explore Other Options?*, 19 Marq. Intell. Prop. L. Rev. 289 (2015) (explaining common law history of teacher exception).

There is some debate about whether the teacher’s exception survived the 1976 amendment to the Copyright Act. Most courts agree that there is no teacher exception. See, e.g., *Molinelli-Freytes v. Univ. of P.R.*, 792 F. Supp. 2d 164 (D.P.R. 2010) (holding that there is no teacher exception in the amended Copyright Act); cf. *Shaul v. Cherry Valley-Springfield Cent. Sch. Dist.*, 363 F.3d 177, 186 (2d Cir. 2004) (rejecting the teacher exception for high school teachers but leaving it open for college professors); see also Ashley Packard, *Copyright or Copy Wrong: An Analysis of University Claims to Faculty Work*, 7 Comm. L. & Pol’y 275 (2002). But see, e.g., *Hays v. Sony Corp.*, 847 F.2d 412, 416–417 (7th Cir. 1998) (finding a teacher exception in the 1976 Copyright Act because silence suggests Congress did not intend to modify a rule that could create “havoc . . . in the settled practices of academic institutions”), *abrogated on other grounds*, *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 394 (1990); *Bosch v. Ball-Kell*, No. 03-1408, 2006 U.S. Dist. LEXIS 62351, at *19 (C.D. Ill. Aug. 31, 2006) (suggesting the *Hays* precedent is “compelling”); Russ VerSteeg, *Copyright and the Educational Process: The Right of Teacher Inception*, 75 Iowa L. Rev. 381, 393 (1990) (finding the teacher exception still exists).

² See Alissa Centivany, *Paper Tigers: Rethinking the Relationship Between Copyright and Scholarly Publishing*, 17 Mich. Telecomm. Tech. L. Rev. 385, 406–407 (2011) (explaining that “scope of employment” is a term of art defined by law, but many universities disclaim ownership in some faculty materials made within scope of employment).

³ See *Rouse v. Walter and Assocs., LLC*, 513 F. Supp. 2d 1041, 1064 (S.D. Iowa 2007) (citing *Balt. Orioles, Inc. v. Major League Baseball Players Ass’n*, 805 F.2d 663, 672 (7th Cir. 1986)) (“An employee policy is insufficient to alter the statutory presumption under the Copyright Act”).

⁴ *Id.*

⁵ Courts disagree about whether each contribution must be copyrightable or if only the combined work must be copyrightable. Compare *Gaiman v. McFarlane*, 360 F.3d 664, 658 (7th Cir. 2004) (adopting the copyrightability of the combined work as a threshold for joint authorship), with *Siegel v. Time Warner Inc.*, 496 F. Supp. 2d 1111, 1149 (C.D. Cal. 2007) (“The rule in this circuit is that something is a joint work only if each contribution to that work, standing alone, was independently copyrightable material.”), and *Thomson v. Larson*, 147 F.3d 195, 200 (2d Cir. 1998) (explaining the independent copyrightable requirement for joint authorship).

Courts also disagree about how to define intent to be co-authors. The Second and Seventh Circuits require that the joint authors intend for each of them to be a joint author, whereas the Ninth Circuit, adopting a more romantic notion of joint authorship, requires that a joint author originate and “superintend” the work by exercising control. Compare *Thomson v. Larson*, 147 F.3d 195, 201 (2d Cir. 1998) (requiring “a more nuanced inquiry into factual indicia of ownership and authorship,” including (1) how the parties bill themselves, (2) who has decision-making authority, and (3) written agreements with third parties), with *Aalmuhammed v. Lee*, 202 F.3d 1227, 1232–33 (9th Cir. 2000) (evaluating (1) whether the party is the “master mind,” (2) whether there is a manifestation of intent to be co-authors, and (3) whether audience appeal turns on both contributions); see also *Gaiman v. McFarlane*, 360 F.3d 664, 658 (7th Cir. 2004) (suggesting when two professors collaborate on an article and sign a contract with a publisher together, they are joint owners of the copyright).