



Memo: to all Members of the UPEI Faculty Association

From: Sharon Myers, President, UPEIFA

Re.: Intellectual Property

Date: September 3, 2020

In the context of the COVID-19 pandemic, the University of Prince Edward Island Senate has elected to adopt a hybrid or blended approach to teaching for the spring, summer, and fall semesters of 2020. For many of us, this will mean we will be teaching online. The “newness” of this for many has provoked a number of questions about Intellectual Property (IP) rights and privacy rights. This memo offers some guidance on issues of intellectual property and privacy.

Intellectual Property And Privacy

The Collective Agreement and Intellectual Property

1. *Your IP is yours ...*

Article H-4 of the *Collective Agreement*, or “red book,” assures that your intellectual property belongs to you. There is no question about this; the language is clear and is reinforced by past practice. In reference to teaching materials, your IP rights apply whether courses, labs, or clinical instruction materials are delivered in person or online. In terms of IP rights, the teaching context changes nothing in principle.

2. *Your IP includes ...*

Sub-section H4.3 a) and b) provide examples of products FA Members create for which IP rights apply. These include works of scholarship and creative work, but this section also provides IP protection around teaching materials and products. These include, but are not limited to, lecture and lab notes, computer programs, course packages, broadcast courses, interactive textbooks, **course work delivered on the Internet**, multimedia instructional packages, and programmed instructional material. H4.5 augments that list to include course outlines, assessment tools (assignments, for eg.), grading (rubrics, for eg.), reports or correspondence pursuant to your teaching. The FA applies a broad interpretation to ‘course work’ and to the panoply of materials that Members develop in the process of course development and delivery.

3. *You can surrender your IP rights ...*

but only if you choose to. In the context of our *Collective Agreement* and in reference to teaching and instructional materials, altering your IP/copyrights requires your written consent and that of the University (H4.6). For example, you may have taught course X1000 for years and now a new colleague is going to teach it. A Chair, Dean, or the new colleague might ask if you would share your course moodle site with the new instructor. In order for that to happen, E-Learning must secure your written consent to permit that access. This process has recently been clarified between the FA and the Employer.

You cannot be forced to relinquish your rights (or materials) by the University or a third party with whom you might be considering a contract. The FA offers support and guidance to Members

considering contracts that propose to alter their IP rights (more often concerning research than teaching). Reach out if you need information or have questions. We strongly encourage you to consult with us prior to signing away your rights and, indeed, in some circumstances the FA's review is required.

4. The Employer has a (very limited) right to "use" your IP ...

Sub-sections H4.4 and 4.5 contain language that sometimes causes a bit of confusion. For example, 4.4 references the University's "non-transferable right to use" your IP and 4.5 references the University's "perpetual license to use" your IP. Sometimes Members wonder if that means the Employer has some ownership over your IP, especially concerning teaching materials. The answer is no. Let's break these sections down:

H4.4, which refers to a perpetual license, means that you can't charge the University to use IP you develop if you created that material while using University resources (funds, facilities, support or tech services). If, however, you develop those materials on your own time without University resources, it is arguable the license is not triggered. Neither can the University take your property and share it with others or sell it. Simply put, your IP remains yours unless you sign it away; however, you can't charge the University for its use. (Note: H4.7.3 regarding Proprietary Technology – ie., inventions or discoveries that can be commercialized – modifies some of the previous statements.)

H4.5 means the same as 4.4, applying the principle about no-charging (licensing/right to use) to teaching materials more specifically. However, if your Dean's Office reaches out to ask for a course outline to keep on file, or administrative materials, this section permits this.

The license referred to in 4.4 does not prevent you from disposing of your course materials.

The Faculty Association has sought legal advice on this, and the above information reflects that advice.

5. There is a dispute settlement mechanism ...

While disputes around Intellectual Property more commonly occur around proprietary technology (discoveries that may be commercialized), H4.8 provides a way to settle disputes. There are essentially two modes of dispute resolution. H4.8.1 directs all disputes to a panel that will hear the arguments and decide the issue. H4.8.2 refines this. If the dispute is between an FA Member(s) and the University, and if the sole issue is ownership of IP, then the matter goes to mediation. If mediation fails to produce a resolution, the matter may proceed to arbitration.

Signaling Your IP Claim

1. Educating students about your IP rights ...

While the *Collective Agreement* defines IP rights between the Employer and FA Members, many have asked how to protect their IP from being distributed or downloaded by students without your consent.

For clarification, the Senate regulations around academic misconduct apply in online learning environments as well as in person ones, and instructors may initiate complaints through those processes.

The FA recommends that you provide students with a clear indication of what they can and cannot do with the materials on your online learning platforms, and clear indication of what they can or cannot do in terms of recording live or synchronous lectures, class meetings, and so on. Some instructors will be restrictive in terms of fully containing their IP. Others will be less so. As always, clarity at the outset may mitigate problems later on.

Additionally, the FA and many best practice guidelines around IP and copyright suggest the inclusion of a 'boilerplate' statement in a prominent position on your online learning platform (such as Moodle). This statement is designed to assert your IP/Copyright claim, and educates students about your rights. It is a legal mechanism; it is an assertion of your legal copyright to the course materials you have prepared and created. Here is a sample text from York University:

INTELLECTUAL PROPERTY NOTICE

These course materials are designed for use as part of the (enter course code) course at York University and are the intellectual property of the instructor unless otherwise stated. Third party copyrighted materials (such as book chapters, journal articles, music, videos, etc.) have either been licensed for use in this course or fall under an exception or limitation in Canadian Copyright law.

- *Copying this material for distribution (e.g. uploading material to a commercial third-party website) may lead to a charge of misconduct under York's [Code of Student Rights and Responsibilities](#) and the Senate Policy on [Academic Honesty](#) and/or legal consequences for violation of copyright law if copyright law has been violated.*

The Canadian Intellectual Property Office provides the following advice:

Marking a work with the copyright symbol is not mandatory under Canadian copyright law but some other countries do require it. The marking consists of the symbol ©, the name of the copyright owner and the year of first publication.

Marking a work with this symbol serves as a general reminder to everyone that the work is protected by copyright. You can use this symbol even if the work is not registered.

The Collective Agreement and Privacy, and Privacy beyond the contours of the Collective Agreement

1. Your "classroom" should not be surveilled ...

Article H-7 in the "red book" defines Members' privacy rights. Sub-section H7.2 a) provides that FA Members have a "right not to be watched by the Employer." This applies to electronic and non-electronic forms of surveillance and includes "any kind of computer surveillance or other devices." H7.2 d) adds clarity to the scope of this by adding that "university classrooms, other areas used for teaching purposes" are not to be surveilled by the Employer. The concern here, one noted by CAUT, is that some teaching platforms might permit recording or monitoring of online teaching by the Employer. In particular, following the advice of CAUT, "no institution should be recording or transcribing online classes without the consent of the instructor and students."

2. Your "classroom" should have restricted access ...

Any online learning platforms the Employer supports should restrict access to who can enter "your class," view videos and course materials, and otherwise engage with your online course materials and delivery.

3. Personal email addresses are potentially problematic ...

Both instructors and students are advised to subscribe to any video conferencing software (for eg., Zoom, Collaborate, Google Meets, etc.) using their institutional email addresses rather than personal email addresses. We are advised that some platforms will recognize those with a similar email domain as part of the same organization. For example, if you subscribe as xyz@xmail.com, the platform might provide access to anyone with a xmail.com domain.

4. Best practice guidelines indicate students and professors shouldn't be recorded without permission ...

The Centre for Teaching Support and Innovation at the UofT has created some draft statements that indicate what students may or may not do in terms of recording, downloading, and sharing course meetings. You might find these helpful to include in your course.

<https://teaching.utoronto.ca/ed-tech/audio-video/sample-statements/>

Please note, exceptions apply for students who have documented accommodations.

Should you have any questions, please be in touch:

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