

MEMORANDUM

To: Western Carolina University

From: Shea Browning
General Counsel



Re: Policy 84 - Interpretation

Date: July 25, 2023

This purpose of this Memorandum is to clarify University Policy 84 – Copyright Policy (“Policy 84”) regarding copyright ownership of courses and course material generated by faculty creators at the direction of their supervisor. Pursuant to University Policy, Responsibility for interpretation of policies ultimately rests with the Legal Counsel Office (Policy 1 – Section VI.). The definition of a course includes in-person, synchronous, asynchronous, online, and hybrid courses and related materials, including material located on the University’s learning management system associated with the development of the course. The term course also includes “development” courses that may or may not be delivered to students, the creation of which was directed by a supervisor.

The Legal Counsel Office (“LCO”) regularly receives requests for counsel regarding the copyright ownership of courses and course material that is or was generated by a faculty creator at the direction of their supervisor. Courses created at the direction of a supervisor are Directed Works where the copyright belongs to the Western Carolina University (“University” or “WCU”) and are not considered “Traditional Works or “Non-directed Works” where the copyright belongs to the Creator. The act of directing the creation of a course results in the University’s copyright ownership of the course. The copyright ownership associated with a course and course material created at the direction of the faculty creator’s supervisor, rests with the University.

Policy 84 is the controlling WCU policy regarding copyright ownership and provides guidance on this issue. Directed Works are works that (1) are funded or created (2) at the specific direction of the university and (3) includes those products that would be the expected outcome of the job. When a supervisor directs¹ a faculty creator to develop a course or assigns a course to a faculty creator and the faculty creator complies, the development of that course is funded by the University in the form of salary compensation to the faculty creator. In a typical course creation scenario, the supervisor, acting pursuant to their university authority, directs the creation of the course and ensures that the course meets the curricular needs of the specific program. Finally, the typical course development scenario is an expected job outcome for the faculty creator. Directed creation of a course and course materials are Directed Works pursuant to Policy 84; thus, any copyright interest is owned by the University.

While “distance learning materials” is included in the definition of “Traditional Work” or “Non-directed Works” the term is modified by the phrase “resulting from non-directed effort.” To qualify as a “Traditional Work” or “Non-directed Work,” the creation of the course must be non-directed. If a faculty creator developed a course without the direction of their supervisor, the faculty creator would likely own the copyright in the course, and related course content.

When a supervisor, such as a Department Head or Dean, directs a faculty member to create or develop a course and course material, the course and course material would be considered a Policy 84 Directed Work and copyright ownership would rest with the University. Pursuant to Policy 84 the faculty creator would maintain a “shop right” in the course and course material as that term is defined by policy, however, the faculty creator would not have the authority to control the use; destroy; reuse; distribute; or exclusively develop derivative works associated with the course and/or course material. All options stated in Policy 84 remain open to the faculty creator.

This interpretation shall remain in full force and effect until rescinded.

¹ This may include instances in which a faculty member has, historically, taught a course, but has never received specific direction from a current supervisor to do so. This also may include instances where a supervisor has approved a faculty “work load” request to teach a course, but has not specifically directed the faculty member to teach the course.