

Distance Education Courses and Intellectual Property

In the past, there has been a lot of misinformation—including in KSU branded documents and even on the Faculty Affairs website—about the intellectual property (IP) developed by faculty especially in the context of the initial development or extensive revision of distance education (DE) courses.

Misinformation:

When the university will be contributing resources, including workload equivalency to faculty developing or significantly revising a DE course, the faculty member is normally expected to select either Joint Effort (under which the faculty member and University jointly own the IP developed) or University Sponsored Effort (under which the University exclusively owns the IP developed) on the Distance/Distributed Learning Agreement (DDLA) form.

This is categorically false.

Fact:

Issues relating to Faculty IP generally are governed by Article XX of the [TT CBA](#) and issues relating to the development and teaching of DE courses are governed by Article XXI of the TT CBA. FTNTT faculty have “me too” language in Articles XVII and XVIII of the [FTNTT CBA](#). (All contractual references in what follows are to the TT CBA.)

Faculty retain ownership of all scholarly works created in the fulfillment of the faculty member's normal duties and responsibilities. This explicitly includes but is not limited to textbooks, class notes, class handouts, test items, examination materials, and classroom presentations (see CBA, Article XX, Section 2.H and Section 4.A). The University owns some or all of the IP created by a faculty member only when the faculty member and University “knowingly and voluntarily enter into a written agreement to specifically create or use such specified intellectual property” (see CBA, Article XX, Section 4.B.2-3).

Fact:

In all cases in which a faculty member is requested to initially develop or significantly revise a DE course, that initial development or extensive revision “shall be compensated as workload equivalency”(see CBA, Article XXI, Section 4.D).

Fact:

“Faculty members who develop and/or teach distance education courses must be provided with opportunities for access to supportive Faculty development, consistent with the need of the Faculty and availability of University resources and services for that purpose”(see CBA, Article XXI, Section 5.B).

Fact:

Receipt of the contractually guaranteed workload equivalency for initial development or extensive revision of a DE course in no way abrogates the fact that “[i]n all cases, the Faculty member(s) will retain all ownership interests in his or her contribution to the development or revision of a distance education course unless agreed otherwise in writing by the Faculty member(s) and the University”(see CBA, Article XXI, Section 6.A).

Fact:

Faculty should only be expected to select Joint Effort or University Sponsored Effort on the DDLA form when the University is providing “additional compensation and substantial assistance” over and above the workload equivalency guaranteed by Article XXI, Section 4.D and the support, resources, and services guaranteed by Article XXI, Section 5.B (see CBA, Article XXI, Section 6.B).

Fact:

In any case in which a faculty member selects Joint Effort or University Sponsored Effort on the DDLA form, a “copy of this agreement shall be filed with the University Counsel, with copy to the Association [AAUP-KSU]”(see CBA, Article XX, Section 4.B.2-3).

Consideration:

AAUP-KSU routinely informs faculty that the IP associated with DE courses is worth tens of thousands of dollars and that no reasonable person should knowingly and voluntarily sign away all or part of their IP rights for a few thousand dollars.

Consideration:

Language on the current DDLA form regarding the category of Joint Effort is woefully inadequate to satisfy the contractual requirement that an agreement to create a Joint Effort must define “the developmental obligations, the rights to revise and update, the conditions of use, the terms and compensation for subsequent use, and the ownership share of each party”(see CBA, Article XXI, Section 4.B.3).

Consideration:

In most cases, there is no need for the University to own any of the IP created by a faculty member who designs or substantially revises a DE course. In cases where the University desires to be able to assign the DE course developed or revised to another instructor, this can be accomplished by the selection of the effort type “Compilation.”

Per CBA Article XX, Section 4.B.4 (emphasis added):

“If the work is a compilation, the Faculty member shall retain all ownership interests in his or her contribution but by allowing, by prior written agreement, his or her work to become part of the compilation thereby grants a non-exclusive, royalty-free license to the University for use of his/her contribution. While the University shall own the rights to the compilation, it shall own no rights in the underlying work beyond said license. Notwithstanding the royalty-free license, the University will share the net proceeds from the compilation with the Faculty¹ member, as described in Section 3.C. [the definition of ‘net proceeds’], above.”

AAUP-KSU has communicated this fact to faculty members via our “[Navigating the Distance/Distributed Learning Agreement Form](#)” flyer which is part of our “[Know Your Rights](#)” series available on the [AAUP-KSU website](#).

¹ Per Article I, Section I.H of the TT CBA, the use of capital ‘F’ ‘Faculty’ in the TT CBA denotes members of the TT bargaining unit of AAUP-KSU. However, given the “me too” language in the FTNTT CBA, the provisions quoted in this document apply equally to FTNTT faculty.