

Report of the 2N Committee

on

Distance Learning

FEBRUARY 2, 2001

Committee Members:

Mary J. Denyes, Associate Professor, College of Nursing
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James Johnson, Vice President for Computing & Information Technology
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Barbara Redman, Dean, College of Nursing
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Preamble

As an outgrowth of the 1999 AAUP/AFT – Wayne State University contract negotiations, a 2N Committee was formed in compliance with the June 14, 1999 Letter of Agreement on Distance Learning (See Appendix A for the Letter of Agreement). The Committee's charge was to make recommendations pertaining to the following distance education issues:

- Ownership of intellectual property;
- Work load; and
- Compensation

The Committee relied on the July 29, 1999 Report of the Provost's Committee on Distance Learning.

Assumptions

Definition of Distance Education. The following report is based upon a number of key assumptions, the first of which pertains to the definition and nature of distance education. We view distance education as any formal instructional procedure in which students and faculty members are separated by space and/or time for a major part of the program. This is a standard definition presented in the distance education literature. It is a definition that encompasses a wide variety of distance learning methods. Currently, the most popular distance education methodologies employed at Wayne State University and other higher education institutions are web-based instruction and interactive television (ITV – also called two-way video). While telecourse (one-way video) enrollment is no longer dominant, there is still some activity in this area. This report is written to apply to not only all of these delivery formats in credit-generating courses or programs, but it is hoped that it will also be applicable to other emerging technologies.

Existing Academic Policies and Statutes. The second assumption is that these procedures will be implemented within an environment governed by traditional

academic policies and values, as well as the Wayne State University Board of Governor's statutes, Executive Orders, University Policies, and the contract negotiated by the University and the AAUP/AFT. *A fundamental assumption is that the faculty of the University assumes responsibility for initiating, selecting, adapting, designing, delivering, and evaluating academic courses and programs.* Instruction delivered via distance education techniques would be treated no differently than traditional classroom or laboratory-based instruction. Academic units have responsibility for the curricular content of all distance education courses and programs including elements such as course content, faculty selection, and approval of all courses and/or programs for distance delivery developed by other organizations or educational institutions. This, too, is consistent with current practice. Courses or programs designed only for distance delivery would be subject to the same University policies and procedures that govern the approval of campus-based instruction. This also conforms to traditional policy of faculty selecting the instructional methodology, as well as the instructional content.

This report is also mindful of the Board of Governors statute 2.41.04, Patent and Copyright Policy, which governs intellectual property. The copyright provision of the Board of Governors statutes, the section most pertinent to this report, is relatively brief. According to the statute, the general rule is that faculty and staff "retain all rights to copyright in published works which they have authored as a part of their traditional scholarly pursuits."¹ There are two exceptions to the rule of author ownership. First, for copyrightable works made by "persons who are employed or directed within the scope of their employment to produce specific works," the University retains copyright in its own name. In this instance, the statute acknowledges that the "copyright may be subject to contractual arrangements between the University and the personnel involved."² Second, in cases where an author "requests the use of University facilities and/or personnel"³ of an extraordinary nature, the policy envisions that the University may have an interest in the finished copyrightable work. (Faculty or staff who have questions as to the applicability of these two exceptions should discuss the matter with their unit heads). This report is written in keeping with the spirit of these provisions; *there is a presumption that curriculum design and development is an extension of faculty scholarly pursuits.* Distance education, appropriately used, may enhance Wayne State's traditional commitment to broad access and non-traditional students.

¹ Id. at 2.41.04.640.

² Id. at 2.41.04.640.

³ Id. at 2.41.04.640.

1. **Intellectual Property Ownership**

A. Necessity for Contract

As stated above, the University Copyright Policy provides that in the event the University has an ownership interest in a work created by faculty or staff, the “copyright may be subject to contractual arrangements between the University and the personnel involved.” Since it is anticipated that in the distance learning context issues related to copyright ownership may become complex, the Committee strongly recommends that written agreements be utilized wherever possible to clearly set forth the obligations and rights of both the University and the faculty and staff members as to distance learning materials. Such agreements should be made before the task is begun.

The University should provide guidance and support for departments in choosing the appropriate form and language for such agreements. Areas which may be addressed include the scope and extent of the project, any special workload or compensation arrangements, facility use, permissible distribution of the finished project and ongoing faculty and staff oversight of course administration.

B. Collective or Collaborative Works

In general, the University Copyright Policy will apply to a work regardless of how many faculty and staff members are involved in its creation. In the event two or more faculty or staff members contribute to a work, copyright may be jointly held by the authors. It is advisable for all involved to have a written agreement in place to specify how the work may be used and what the ongoing obligations of each party will be. If the University has directed that a specific collective work be produced, the University will have an ownership interest in the work under the Policy, and an appropriate contract should be put in place just as with a single faculty and staff author (see Section A).

If faculty and staff or support from another university are involved in a distance learning project, the appropriate University office (such as Sponsored Programs Administration, Technology Transfer or General Counsel) should be contacted so that the details of the arrangement may be negotiated and set out in an appropriate contract.

C. Control of Content

1. Regardless of copyright ownership, faculty and staff members should retain ongoing instructional rights and the responsibilities to:
 - revise and update instructional materials they have originally designed for distance delivery;
 - place reasonable time limits on the use of instructional materials they have originally designed for distance delivery; and
 - control the revision by others of instructional materials they have originally designed for distance delivery.
2. Regardless of copyright ownership, the faculty and staff members should retain ongoing scholarly rights to:
 - take credit for their creative contributions,
 - reproduce the work for their instructional purposes, and
 - incorporate the work in future scholarly works authored by that faculty and staff member.
3. Faculty and staff members should be involved in decisions regarding any distribution of course materials that they have developed or partially developed.
4. Wayne State University recognizes the importance of copyright and other protections afforded to the creators of intellectual property. Faculty and staff are responsible for making use of text, media, software, and other information resources in accordance with copyright and licensing restrictions and applicable University and federal policies. The University is responsible for providing assistance on such issues.

D. Patentable Inventions

It is possible that work related to distance learning may result in a patentable invention, which may be defined as a novel and useful solution to a problem, including solutions relating to processes, machines, articles of manufacture or compositions of matter. The University policy regarding such inventions

differs from the copyright policy, it can be found at Wayne State University Code 2.41.04. The type of arrangement under which the invention was conceived will affect the determination of ownership and rights to income from the invention. A faculty or staff member who believes he or she may have a patentable invention should contact the Office of Technology Transfer and follow the established procedures for reporting the related details.

2. Faculty and Staff Load and Compensation

A. Assignment of faculty and staff to distance-delivered courses should:

- be made with sufficient lead time to allow for preparation and training,
- take into account the training, wishes, and suitability of the faculty and staff member for the delivery method proposed, and
- be matched with appropriate resource allocation.

B. Faculty and staff should receive load credit or compensation for the development of distance education courses.

C. The teaching loads of faculty should be adjusted to reflect any additional responsibilities of distance education sections.

D. Faculty and staff should be supported and appropriately rewarded for developing and teaching in a distance education format.

APPENDIX A

June 14, 1999

Professor Michael J. McIntyre
Chief Negotiator
Wayne State University Chapter AAUP-AFT
5440 Cass Avenue
Detroit, Michigan 48202

REFERENCE: Distance Learning

Dear Professor McIntyre:

It is agreed that a 2N committee shall be constituted to study and make recommendations regarding the following issues associated with the implementation of distance learning courses at Wayne State University:

1. Intellectual property rights as it applies to materials used to develop and produce distance learning courses.
2. Workload issues such as release time to prepare distance learning courses.
3. Remuneration and other pertinent issues.

An interim report of this committee shall be issued no later than May 15, 2000; the final report shall be issued no later than May 15, 2001.

Sincerely yours,

Li Way Lee
Associate Provost for
Faculty Relations