

# **Draft Recommendations Stevens Institute of Technology Web-Based Course Intellectual Property Rights**

## **1. Preamble**

It is proposed that contracts, policies, and guidelines which bear on creation, ownership, storage, and use of intellectual properties of Web-based courses:

- a. Foster the creation of the best possible Web-based courses;
- b. Foster dissemination of new knowledge in maintaining high academic standards;
- c. Provide incentives for various constituencies of the Institute to participate fully in the use and creation of Web-based courses;
- d. Recognize that the creation and dissemination of Web-based courses come in a wide variety of contexts;
- e. Support the concept that ownership of the intellectual property rights in Web-based courses is not necessarily an "all-or-nothing" proposition; rather, rights that belong to owners of intellectual properties may be allocated to support mutual interests of the Institute and its various constituencies;
- f. Foster within the Institute community collective and individual ability to access, acquire, and store information and works, to help scholars and students in the proper use and citation of works of others, and to maintain coordination and contact with publishers, software vendors, and other information providers;
- g. Adapt contracts, policies, and guidelines appropriately to address challenges and opportunities presented as technologies and cultures continue to evolve; and
- h. Operate under a "policy framework" in which negotiations proceed in good faith under a limited number of "model" agreements.

## **2. Definitions and Distinctions**

To implement effective and fair intellectual property rights policy for Web-based courses, these distinctions and definitions are proposed:

- a. **"Customary" and "Extraordinary."**
  - (i) "Customary" conditions apply, but are not necessarily limited to, situations in which faculty is provided with normal support, such as standard office and laboratory space, library facilities, ordinary access to computers and networks, or salary.

- (ii) “Extraordinary” conditions apply, but are not necessarily limited to, situations in which substantial use of specialized or unique staff, facilities and equipment or other special subventions or compensation is provided by the Institute to the faculty to create online courses. Under “Extraordinary” conditions, faculty enter into contracts with the Institute.

**b. “Intellectual Content” and “Commercialization.”**

- (i) “Intellectual Content” refers to material contained within a course; namely, syllabi, lecture notes, bibliographies, readings, examinations, and other elements created by faculty.
- (ii) “Commercialization” covers activities such as marketing, distribution, dissemination, licensing, and institutional management, among other services provided by the Institute or other entities.

**c. “Supplementary” and “Entirely Online.”**

- (i) “Supplementary” refers to Web-based course modules created by faculty to supplement conventional classroom teaching.
- (ii) “Entirely Online” are courses delivered to distance-learning students entirely over the Web.

**d. “Development” and “Teaching.”** With respect to Entirely Online Web-based courses, faculty engage in two distinct activities:

- (i) “Development” refers to creation of online syllabi, lecture notes, bibliographies, readings, examinations, and other elements in advance of instruction. The individual (or individuals jointly) engaged in these activities is called “Developer.”
- (ii) “Teaching” refers to the activity in which faculty instructs distance-learning students Entirely Online. The individual (or individuals jointly) engaged in this activity is called the “Teacher” or “Instructor.” Some “Development” activities may continue during delivery of an Entirely Online Web-based course.
- (iii) It is recommended that faculty be compensated separately for Development and Teaching.

**e. “Copyright Ownership” and “Transfer of Copyright.”**

- (i) Under Extraordinary conditions, it is proposed that when Developer creates an Entirely Online course, Developer assumes “Copyright Ownership” and it is further suggested that Developer “Transfers Copyright” to the Institute for Commercialization.
- (ii) It is also proposed that when faculty create Web-based Supplementary modules for conventional classroom teaching, Copyright rest with the faculty member, without Transferring Copyright.

**3. Concepts**

**a. Faculty Oversight.**

In order to assure high quality Web-based courses, standard faculty processes are to be applied to review and approve new (or sufficiently different) Entirely Online Web-based courses.

**b. Portability.** Model Agreements may contain these elements:

- (i) Faculty members are free to use their Supplementary Web-based course materials at other institutions without the Institute’s approval.
- (ii) Entirely Online Web-based courses Developed at Stevens, created under Extraordinary conditions, may not be offered at other institutions without the Institute’s prior approval.
- (iii) Negotiated licensing fees may apply to the other institutions when a former faculty member teaches Entirely Online Web-based courses Developed at Stevens under Extraordinary conditions.

**c. “Unbundling” Intellectual Property Rights.**

- (i) **Developer’s Right of First Refusal.** In the event the Institute wishes to offer a course Developed by a Full-time faculty member under Extraordinary conditions, it is recommended that Developer be given the “right of first refusal” to teach the course. In the event Developer fails to teach the course in a mutually agreed schedule, the Institute may offer the course to another Teacher. The Institute may wish not to offer this right to Part-time faculty course Developers.

- (ii) **The Institute's and Developer's Licensing Rights.** It is recommended that when the Institute licenses Entirely Online Web-based courses to third parties—such as other educational institutions, publishers, distributors, information providers, scholarly societies, corporations, and other commercial and nonprofit entities—Developer and the Institute may share the proceeds. It is also recommended that when the Institute and Developer agree to have an Entirely Online course taught by another Teacher, Developer may receive a percentage of receipts after the new Teacher's compensation has been recovered by the Institute.
- (iii) **Developer's Scholarly Rights.** It is recommended that Developers be given the right, without requesting permission from the Institute, to use Intellectual Content from their Entirely Online Web-based courses—even those created under Extraordinary conditions—in scholarly contributions to books, articles, conventional courses, seminars, lectures, and similar scholarly activities in print and in person. It is also proposed that without seeking permission from the Institute, the same right be given to faculty to use Intellectual Content from Web-based material prepared as Supplementary to conventional Web-based courses.
- (iv) **The Institute's Commercial Rights.** It is recommended that the Institute be given the right to Commercialize and License Entirely Online Web-based courses created under Extraordinary conditions. In the event the Institute fails to Commercialize or License such courses in a mutually agreed schedule, such rights may revert to Developer. It is also proposed that the Institute provide Developer with periodic reports covering the extent of their courses that have been Commercialized and Licensed, as well as compensation that may be due Developer from such Commercialization and Licensing. In the event compensation is due Developer, it is recommended that the Institute pay Developer earned compensation in a timely fashion.
- (i) **The Institute's Digital and Other Electronic Rights.** It is recommended that rights to derivative digital and electronic works—such as television, film, video, CD-ROM, DVD, computer disc, audio, and other recordings derived from Entirely Online Web-based courses, created under Extraordinary conditions—rest with the Institute. It is also proposed that, in the event the Institute fails to exploit such rights in a mutually agreed schedule, such rights revert to Developer. Developer may seek permission from the Institute to use these rights in connection with his or her own scholarly activities; in which case, it is recommended that the Institute not unreasonably withhold them. It is also recommended that the Institute provide Developer with periodic reports of the extent of courses his or her Commercialized and Licensed as well as pay any compensation that may be due Developer from Commercialization and Licensing in a timely fashion.

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- (ii) **Rights Accorded Full-time and Part-time Faculty.** It is proposed that the Institute provide full intellectual property rights to Full-time faculty. Limited intellectual property rights may be accorded Part-time faculty.

### **4. Model Agreements**

Should these Policy Recommendations be approved, it is proposed that Model Agreements be created to establish contractual relations between the faculty and the Institute bearing on Development, Teaching, and dissemination of Entirely Online Web-based courses. No new contractual arrangements need be introduced for Supplementary Web-based courses, inasmuch as traditional academic practice already covers such situations.

It is recommended that Model Agreements incorporate distinctions and definitions proposed; that faculty be compensated separately for Developing and Teaching; that the Institute may elect to provide Full-time faculty greater rights in courses than it does to Part-time faculty; and that Developers assume Copyright and Transfer those rights to the Institute for Commercialization. It is also recommended that the portability section recommended be introduced in all Model Agreements.

The Options outlined are merely suggestions for a variety of contractual terms that may be negotiated. Other permutations may be introduced. Also note that items outlined under each Option are not fixed. Terms from one Option may be introduced into other Model Agreements.

#### **Option A**

1. Licensing: Institute and Developer share proceeds equally, less administrative charges.
2. Institute's Own Use: Developer receives 10% of proceeds from course taught by other faculty, less other Teacher's compensation and administrative charges.
3. Reversion of Rights for Failure of Institute to Commercialize: 3 years.
4. Duration of Agreement: 5 years.

#### **Option B**

1. Licensing: Institute receives 60%; Developer 40% of proceeds, less administrative charges.
2. Institute's Own Use: Developer receives 5% of proceeds from course taught by other faculty, less other Teacher's compensation and administrative charges.
3. Reversion of Rights for Failure of Institute to Commercialize: 4 years.
4. Duration of Agreement: 6 years.

### **Option C**

1. Licensing: Institute receives 40%; Developer 60% of proceeds, less administrative charges.
- 1 Institute's Own Use: Developer receives 15% of proceeds from course taught by other faculty, less other Teacher's compensation and administrative charges.
- 2 Reversion of Rights for Failure of Institute to Commercialize: 2 years.
- 3 Duration of Agreement: 3 years.

*Prepared by Robert Ubell, October 15, 1999, on behalf of the Ad Hoc Intellectual Property Rights Committee.*

### **Appendix C**

#### Model Agreement Between Developer of an Entirely Online Course and The Stevens Institute of Technology

Whereas The Stevens Institute of Technology (hereinafter "The Institute") wishes to foster the creation of the best possible courses to be delivered to students entirely via a computer network; and

Whereas, The Institute wishes to foster the dissemination of new knowledge while maintaining high academic standards; and

Whereas, The Institute wishes to provide incentives for its faculty and students to participate in the creation and use of such entirely online courses; and

Whereas, The Institute wishes to promote the ability to access, acquire and store information and to help students and faculty to use such information in accordance with copyright law.

Now Therefore, it is agreed by and between me, a faculty member, staff member or other employee (hereinafter "The Entirely Online Course Developer") and The Institute that:

1. In accordance with the provisions of the Copyright Policy of The Institute, this special agreement is being entered into with respect to [course title and/or description of the subject matter for which a course is to be developed](hereinafter "The Entirely Online Course").
2. Under the terms of this special agreement, I grant to The Institute all right, title and interest in the copyrightable work referred to herein as The Entirely Online Course

and any derivative work and will assist The Institute in obtaining and enforcing the copyright rights, including the execution of an assignment document transferring the entire copyright from me to The Institute. As used herein, a derivative work means a work comprising a substantial amount, i.e. at least 75%, of The Entirely Online Course's expression.

3. In consideration of my efforts in developing The Entirely Online Course, I will receive payment as follows: [amount paid for course development and timing of payments].

4. In the event that a license is granted to a third party for the reproduction, distribution and/or use of The Entirely Online Course, I shall receive thirty three and one third percent (33 1/3%) of any Net Licensing Revenue received by the Institute. "Net Licensing Revenue" means revenue received minus the costs associated with the development, protection and/or commercialization of The Entirely Online Course.

5. In the event that a third party is employed by Institute to teach The Entirely Online Course, I shall receive three per cent [3%] of the Net Teaching Revenue received by The Institute. "Net Teaching Revenue" means revenue received minus costs associated with the teaching and administration of The Entirely Online Course.

6. The Institute shall have no further obligations to me with respect to The Entirely Online Course.

7. I certify that the materials covered by this agreement are my own independent, creative effort and do not infringe on the copyright of others.

ACCEPTED AND AGREED TO BY THE PARTIES HERETO:

The Trustees of the Stevens Institute of Technology

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Dated:

The Entirely Online Course Developer

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Dated: