

# update

from UUP President Fred Kowal



August 2021

## Copyright and Intellectual Property: Your Rights as a SUNY Employee

The expansion of online education is creating new teaching and course development situations that challenge previous understandings of copyright and intellectual property protections. Since 2014, UUP has compiled information about campus policies and members' experiences. While we address specific campus issues as they come to our attention, we believe a broad information campaign is needed to inform members of their rights and engage campus senates and administrations in discussion to clarify intellectual property issues in the new online-education environment.

UUP members may not know the intellectual property protections afforded by SUNY statewide policy, and campus administrators may claim ownership of intellectual property in violation of that policy. Here's how we can educate ourselves and protect our rights:

**Find out what your campus online education and copyright/intellectual property policies are. Check them against SUNY's policy at <http://bit.ly/2gaU0Vc>**

**Inform UUP if you see a discrepancy between your campus actions and SUNY policy.**

**Press for open discussions on campus to clarify campus policies for all research, teaching, and course development situations.**

**Engage your campus senate leaders and your UUP chapter leaders to help facilitate discussions and address concerns.**

**Contact your UUP chapter if you have a problem or need help obtaining information about your intellectual property rights.**

### FAST FACTS

In the absence of a written work-for-hire agreement that the employee voluntarily signs, copyright ownership vests in the individual faculty member.

Individual campuses can establish work-for-hire arrangements as long as employees sign a written waiver surrendering ownership of their work.

While faculty can waive their rights, campus administrations cannot obtain rights without an individual's written consent.

**Bottom line:** Only individual faculty members determine if others can use their intellectual property by agreeing to a *license for use* or *waiver of ownership*. No other person or institution should use a faculty member's intellectual property without obtaining one or the other. Faculty cannot be compelled to relinquish ownership of their intellectual property.

### CONTACT UUP IF:

- You are told that your intellectual property belongs to the University and you haven't signed a waiver; or
- If you are presented with a waiver form and told that you must sign it.



UNITED UNIVERSITY PROFESSIONS | PRESIDENT FREDERICK E. KOWAL, PH.D.  
518.640.6600 | FAX: 518.640.6698 | [WWW.UUPINFO.ORG](http://WWW.UUPINFO.ORG)  
FOLLOW US @UUPINFO | MEMBERSHIP INFO LINE: 518.640.6678

## FAMILIARIZE YOURSELF WITH SUNY POLICY TO PROTECT YOUR RIGHTS IN YOUR WORKPLACE

Excerpt from:

### SUNY Faculty Copyright Ownership FAQs



**1. If I post my course content, learning resources, pedagogical materials, or other original works in Open SUNY or the SUNY Learning Commons (or similar SUNY websites), will I retain ownership of my work?**

It depends. Under the current SUNY copyright policy, faculty retain ownership of works produced in the scope of employment, including works produced for online instruction unless there is a written agreement between the University and the faculty member to the contrary. Putting it more specifically, SUNY and faculty may contract for "work-for-hire," authorize the work in advance by written agreement, and determine in the contract who the owner shall be. With respect to work produced for online instruction, practice regarding the use of written agreements varies from campus to campus. In the absence of a written work-for-hire agreement, copyright ownership vests in the faculty.

**2. As a SUNY faculty/staff member, if I own my course content and other materials, and if there are no licenses or other agreements affecting my works, am I the only one who can decide how my materials are used and who may use them?**

Yes, if the faculty staff member is the author of the "course content and other materials."

**3. In my faculty/staff role, I often use common campus resources (for example, computers, library books, library databases, consultations with reference librarians, help from our teaching center, or help from IT staff). Can my campus or SUNY claim copyright ownership or other rights or control of those works based on the use of campus resources?**

The SUNY copyright policy incorporates the academic work-for-hire exception, the effect of which is to vest copyright ownership in the faculty to works authored by the faculty. Use of SUNY facilities is not a relevant consideration under the SUNY policy.

**4. Would you please list and explain some examples of circumstances when materials produced and works authored by SUNY faculty/staff are considered works-for-hire by SUNY? If my campus asks me to create content for a new course and pays me a stipend without a specific agreement in advance for creating the course, is that new course considered a work-for-hire?**

Works-for-hire are defined under the 1976 Copyright Act in §1.01. In part, works-for-hire are works "specifically ordered or commissioned ... if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire." So, the statute and good practice indicate the need for a written contract as a requisite for work-for-hire. The second and third sentences in SUNY's copyright policy are intended to address work-for-hire not covered by the academic work-for-hire exception, and indicate that such work-for-hire is subject to "contractual arrangements."



For more information or guidance, contact:

VP for Academics Alissa Karl at [akarl@uupmail.org](mailto:akarl@uupmail.org) or

VP for Professionals Carolyn Kube at [ckube@uupmail.org](mailto:ckube@uupmail.org)