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# New Paradigms for Instruction: Impact on Collective Bargaining, Intellectual Property Rights - Excerpt from University of Scranton CBA

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Abigail Byman

Excerpt from University of Scranton CBA  
35<sup>th</sup> Annual National NCSCBHEP Conference

Panel: New Technology: New Paradigms for Instruction.

Impact On Collective Bargaining, Intellectual Property Rights

### **Appendix VIII:** **Copyright**

#### A. Definitions

##### 1. Copyrightable Materials

Under federal copyright law, copyright protection subsists in "original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device" [17 U.S.C. §102]. Copyright exists from the moment of creation of the work. Copyright protects the expression of an idea, but not an idea itself. Works of authorship include the following categories:

- a. literary works, such as books, journal articles, text books, laboratory manuals, lectures, computer programs, monographs, glossaries, bibliographies, study guides, syllabi, work papers, unpublished scripts, lectures, and programmed instruction materials;
- b. musical works, including any accompanying words;
- c. dramatic works, including any accompanying music, live video and audio broadcasts;
- d. pantomimes and choreographic works;
- e. pictorial, graphic, and sculptural works, including works of fine, graphic, and applied art, photographs, prints, slides, charts, transparencies and other visual aids;
- f. motion pictures and other audiovisual works, such as films, videotapes, videodiscs and multimedia works;
- g. sound recordings, such as audiotapes, audio cassettes, phonorecords and compact discs; and
- h. architectural works.

##### 2. Exclusive Rights

Subject to certain limitations contained in the Copyright Act, the owner of a copyright

has the exclusive right to do the following:

- a. reproduce copies of the copyrighted works;
- b. make derivative works based on the copyrighted works;
- c. distribute copies of the copyrighted works to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- d. perform the copyrighted works publicly; and
- e. display the copyrighted work publicly [17 U.S.C. §106].

### 3. Employee and Faculty

The term "employee" shall mean any person receiving regular compensation from the University in exchange for specified services. University employees include faculty, staff and administrators, whether full- or part-time. University employees do not include independent contractors or those persons whose primary connection to the University is that of student. Full-time faculty are those persons who hold full-time faculty contracts and who have been appointed to a faculty rank.

### 4. Sponsored Research and Sponsored Projects

The terms "sponsored research" and "sponsored project" refer to research activities or other works performed by a University employee for compensation from any agency, organization or person external to the University, which research activity or other work may result in the creation of copyrightable works.

### 5. Substantial Use of University Resources

Substantial use includes projects undertaken by the faculty member with the benefit of extraordinary funds, facilities, or opportunities which the faculty member would not ordinarily be entitled to have for any chosen project. Ordinarily available resources include office space and personal office equipment, office computer workstations, library and other information resources, and the means of network access to such resources, including information available on University servers and the Internet, funding, and ordinarily available audio and video resources.

### 6. Royalties

It should be noted that tuition income does not constitute royalty income. The definition of net royalties shall be determined by agreement between the faculty author(s) and the University and incorporated into the specific written agreement as referenced in

paragraphs D.1. and D.2.

## B. Ownership of Works Created by Full-time Faculty

Traditionally, faculty members at many colleges and universities are deemed to own the copyright in books, articles, instructional materials, and other scholarly writings. In recognition of this traditional practice, and specifically in support of faculty freedom to teach, write and publish as they wish, the University affirms that copyrightable works created, made, or originated by a full-time faculty member shall be the sole and exclusive property of the faculty author<sup>1</sup> except when he or she voluntarily chooses to transfer such property in full or in part, or as described in the following cases:

1. Special projects. The University will own the copyright in works created by faculty members as part of a project the nature of which lies outside the normal academic or administrative duties of a faculty member as specified in Section 5.4 of this Handbook and where the faculty members enter voluntarily into a written agreement that such works will be owned by the University.
2. Sponsored research or sponsored project. Where copyrighted materials are created by an investigator in the course of sponsored research funded by an outside agency, copyright ownership will be determined by the applicable terms of the funding agreement.
3. Patentable works. Where a copyrighted work, such as certain computer software, is also patentable, the *Faculty Handbook* Appendix IX will apply, notwithstanding any inconsistent provisions of this appendix.
4. Substantial use of University resources. Substantial use projects shall be identified as such early in the development stage and a written agreement shall be executed between the faculty member and the University. The faculty member and the University shall jointly own such works.

## C. Administration of Copyrightable Works

### 1. Faculty Works Not Work-for-Hire

For those works of which faculty members own the copyright, the faculty members are free to register the copyright and are wholly responsible for protecting the works from infringement.

### 2. Institutional Works or Work-for-Hire

For those works of which the University owns the copyright, whether because the works were created by an employee other than a full-time faculty member, or were developed by a full-time faculty member under a special project, the creator shall disclose the creative works to the University as soon as possible after creation. The Director of Research, assisted by the Director of Research Services and the General Counsel, will

register the copyright if appropriate and protect the work from infringement if necessary.

3. Jointly Owned Works

For those works that are jointly owned by the University and one or more full-time faculty members, the University will register the copyright, if appropriate, and will protect the work from infringement if necessary.

4. Works Created as Sponsored Research or Sponsored Projects

For those works created as a result of sponsored research or sponsored projects, administration of the works will be determined by the terms of the sponsorship agreement.

5. Student-Created Works

Any copyrightable works resulting from student participation in faculty research projects will be owned by the faculty although it is assumed that such student participation will be credited.

D. Distribution of Income

1. Faculty-Created Works Owned by the University

For those faculty-created works assigned to, or initially owned by, the University, the creator will receive fifty percent of the net royalties which accrue to the University. The University portion of such net royalties will be administered by the Director of Research. One-half of such royalties will be given to the University department of the creator of the work. Generally, the other half of the University's share of royalties will be used to stimulate further research, if the royalties result from research; royalties resulting from course-related works will be used to fund further course development. The University reserves the right, at its discretion, to deduct from the University's share of royalty income, prior to any such distribution, expenses properly attributable to the development or protection of the material, including litigation, which may be incurred in enforcing or defending the copyright or in licensing the copyrightable material.

2. Faculty-Created Works Jointly Owned with University

For those works which are jointly owned by the University and one full-time faculty member, fifty percent of the net royalties will be attributed to the University share and divided as described in paragraph D.1. The other fifty percent will go in its entirety to the faculty member. For those joint works with two or more faculty authors, net royalties will be divided in equal shares among the joint owners, with the University share divided as described in paragraph D.1. and the faculty shares payable directly to them.

3. Works Created as Sponsored Research or Sponsored Projects

Income from works created as sponsored research shall be disposed of in accordance with the terms of the underlying contract or grant. In the absence of such terms, the works

created shall be the property of the University, and net royalties received by the University will be distributed as described in paragraph D.1.

E. Resolution of a Dispute Initiated by a Full-Time Faculty Creator

Disputes concerning application of this appendix when a faculty creator is involved shall be resolved by a review panel of three members: the creator or a representative of the faculty creator of the work, a person designated by the Provost/VPAA, and a person mutually agreed to by the faculty creator and the Provost/VPAA. All panel members shall be non-attorney, full-time University employees.<sup>2</sup>

Within fourteen days after the faculty creator disputes the application of this appendix to the Director of Research, the panel shall be formed and convened and shall render its decision by a majority vote. The decision of the panel may be appealed by the faculty creator to the Provost/VPAA.

This dispute resolution procedure is not intended to and does not supersede any grievance or other procedure contained in the *Faculty Handbook*. If a dispute is not resolved under this procedure to the satisfaction of the faculty member involved, the faculty member may then proceed to use any procedure available in the collective bargaining agreement.

<sup>1</sup> In the case of syllabi, the responsibility to submit current copies to the department and distribute them to students as specified in Section 5.4 of the *Faculty Handbook*, and their use by the University for program review and accreditation purposes, is unaffected by the ownership thereof.

<sup>2</sup> If the creator is a full-time University employee who is also an attorney, that person can represent himself or herself.

**Appendix IX:**  
**Patents**

A. Definitions

1. Patentability

Under federal patent law, an invention must pass the following four tests in order to be patentable:

- a. The invention must fall into one of the five statutory classes: 1.) processes; 2.) machines; 3.) manufactures (objects made by humans or machines); 4.) compositions of matter; and 5.) new uses of any of the above [35 U.S.C. §101].
- b. The invention must be useful [§101].
- c. It must be novel [§102].
- a. The invention must be “nonobvious” to “a person having ordinary skill in the art to which said subject matter pertains” [§103].

2. Patent Rights

Subject to the provisions of the patent law, patents “have the attributes of personal property.” They are assignable by an instrument in writing. §261. Whoever without authority “makes, uses, offers to sell, or sells any patented invention...during the term of the patent therefore, infringes the patent.” Patent owners are entitled to relief from such infringement [§271].

3. Sponsored Research Agreement

Any sponsored research grant, contract, fellowship, or other special arrangement to fund research by third parties.

B. Applicability

This Appendix applies to all inventions or discoveries which are conceived or reduced to practice, at least in significant part, by faculty of the University under circumstances described in Section IV of this Appendix. Such inventions or improvements will be referred to as University inventions.

C. Disclosure of Inventions

As soon as reasonably possible in each case, all University inventions shall be disclosed in writing to the Director of Research, using a Disclosure of Invention form which is available in the Office of Research Services (ORS). The Director of Research or the Director of Research Services should be kept fully informed in writing of the progress and results of all research and development work done with respect to such inventions. The Director of Research, the inventor's(s') Dean(s), ORS staff, and the Faculty Research Committee shall keep all disclosed information confidential.

#### D. Ownership of Inventions

Any invention or discovery (a) resulting from research carried on by or under the direction of any faculty member of the University and having all or part of the cost thereof paid from University funds or from funds controlled or administered by the University; or (b) which has been developed in whole or in part by any faculty member through the utilization of University resources or facilities, belongs to the University and shall be used and controlled in ways to produce the greatest benefit to the University and to the public and shall, at the same time, provide a corresponding benefit to the inventor(s). Use of University office space or library facilities shall not constitute a use of University resources for this purpose.

It is possible that a faculty member may develop a patentable invention without the use of any University resources. In such a case, the faculty member is free to pursue patenting on his or her own. The inventor(s) should give notice of invention to ORS and be willing to discuss the nature and circumstances under which the invention was developed, if requested by the Faculty Research Committee.

#### E. Sponsored Research

If the research and development work related to any University invention is financed jointly by the University and one or more third parties or solely by one or more third parties, whether such parties are agencies or departments of the United States, or are other entities, the University and the Principal Investigator will confer with such third party or parties in order to arrive at a mutually satisfactory agreement as to ownership, licensing, royalties, and use of the invention. Funded faculty members shall be bound by agreements with third party sponsors, and such agreements shall govern to the extent that they conflict with this Appendix.

#### F. Disposition of Inventions

The Faculty Research Committee and the inventor(s) may agree to use a person, agency, or organization to evaluate patentable inventions and discoveries. The Faculty Research Committee shall recommend to the Director of Research the disposition of inventions and discoveries. The Director of Research, after consulting with the Provost/VPAA as necessary, shall direct that inventions and discoveries be either: (a) released outright to the inventor(s) in the event it is determined that the invention does not meet the criteria for a University invention; (b) released outright to the inventor(s) in the event it is determined that the invention does not merit or warrant exploitation; (c) released to the individual or organization sponsoring the research under which the invention or discovery was made if such action is required under the terms of the research contract with such organization or individual or is required by law; (d) assigned to one or more organizations for purposes of patenting and commercial development; (e) patented and exploited by the University; (f) patented by the University and licensed to another organization for commercialization; or (g) patented by the University and subsequently assigned to another organization.

The University will inform inventors as to its decisions regarding inventions which they have disclosed no later than sixty (60) days after the filing of the Disclosure of Invention form.

If the invention is released to the inventor(s) so that she or he may apply for a patent at her or his own expense, the inventor(s) shall grant to the University a royalty-free, irrevocable,



nonexclusive license to make or use the invention for its own non-commercial purposes. Should the University decide to abandon development of a University-owned invention, ownership will be assigned to the inventor(s), subject to the rights of sponsors and to the retention of a nonexclusive, royalty-free license to practice the invention for non-commercial University purposes.

#### G. Income

The inventor will receive fifty (50) percent of the net income which accrues to the University from University inventions. Income includes, but is not limited to, royalties and license fees. Net income shall mean the amount remaining after all payments or obligations directly attributable to evaluating, patenting, marketing, licensing, protecting, or administering the invention, if any, are deducted from income received by the University. In determining the use of the University's share of the proceeds, it is intended that research is a priority.

In the case of multiple inventors, the inventors' share shall be divided among the co-inventors, as they shall mutually agree at the time of formal assignment of the invention to the University. Should the inventors fail to agree mutually on a division, the Director of Research shall determine the division.

The University shall disclose to the inventor(s) how net income was determined for each invention.

In the event the inventor(s) do not agree with the decision of the Director of Research having to do with ownership or disposition of or income from an invention, the inventor(s) may ask the Faculty Research Committee to review the decision. Within fourteen days after it is asked to review the decision, the Faculty Research Committee shall review all information submitted to it by the inventor and by ORS and shall make its recommendation concerning the disputed decision to the Provost/VPAA who shall make the final decision.

With regard to inventors who are full-time faculty members, this dispute resolution procedure is not intended to and does not supersede any grievance or other procedure contained in the *Faculty Handbook*. If a dispute is not resolved under this procedure to the satisfaction of the faculty member involved, the faculty member may then proceed to use any procedures available in the collective bargaining agreement.

## **Appendix X:** **Distance Learning**

### A. Introduction

1. The faculty of the University has the responsibility to play a significant and meaningful role in determining the appropriate implementation of distance learning.
2. It is agreed that the provisions of this appendix constitute an agreement separate and distinct from all other agreements entered into by FPC and FAC and that the terms and conditions stipulated herein shall not provide precedent nor be used to interpret any other agreement between FAC and FPC; similarly, the interpretation of this agreement shall be based solely on the provisions set forth herein, except that when alleging a violation or misapplication of this agreement a faculty member shall have full recourse to the grievance procedure set forth in this handbook.

### B. Definition

Advances in technology allow for the development of innovative methods of instruction. The terms "*Distance Education*" and "*Distance Learning*" as used herein refer to instruction where the teacher and the student are usually separated geographically; communication is accomplished instead by one or more technological media: live or recorded visual presentations, materials using direct signal or cable, transmission by telephone line, fiber-optic line, digital and/or analog videotape, print, audio-tape, CD-ROM, computer or Internet technology, e-mail or other electronic means now known or hereafter developed, utilized to teach a course originating from or sponsored by the University. "*Course*" refers to any credit-bearing class offered through the University.

### C. Quality Control of the Curriculum

#### 1. Distance Learning Courses

Distance learning courses shall comply with the University's procedures, standard practices, and criteria, which have been established for traditional classroom courses and in accordance with the *Faculty Handbook*. A distance learning course which constitutes a new course offering must be presented to the full-time members of the academic department in which it is offered for recommendation of approval. Such departmental review of a distance learning course shall occur even when the proposed course is a section of an already existing and approved course.

#### 2. Evaluation of the Distance Learning Class and Faculty Member

- a. Students enrolled in distance learning courses shall have the opportunity to evaluate the course and the instructor just as in any other course that is offered at the University.
- b. Faculty members teaching distance learning courses shall be evaluated in the same manner as all other faculty members in accordance with the appropriate provisions of the *Faculty Handbook* or University procedures. Observation for the purposes of

evaluation will be determined in accordance with departmental practice.

#### D. Working Conditions

##### 1. Teaching Assignments

- a. The assignment of a University faculty member to teach a distance learning course is voluntary, not mandatory, but otherwise subject to the usual procedures for course assignment in accordance with Section 8.1 of the *Faculty Handbook*. Faculty who have accepted a stipend for the development of a distance learning course are expected to teach that course as needed but not to exceed three times in five years. The faculty member may voluntarily offer the course more than three times in five years if it fits programmatic needs.

The precise terms and conditions of these arrangements shall be stated in a written contract signed by the faculty member and the University before the faculty member begins teaching the course. The availability of distance learning course development funding and the amount thereof will be announced during the spring semester of each year.

- b. Faculty may develop distance learning courses without accepting a stipend. These courses must comply with the same review, evaluation, approval, and scheduling process as all other distance learning courses; however, the faculty member will not be expected to teach the course any particular number of times.
- c. Normally the faculty member teaching a distance learning course for the first time will be scheduled to teach that course during summer or intersession; otherwise, it will be scheduled during the faculty member's nine-credit semester.

##### 2. On-Campus Faculty Positions

- a. There will be no reduction in the number of full-time teaching positions in a department as a result of distance learning classes in that department being added to the class schedule.
- b. No pre-recorded form of instruction shall be employed by the University for the purpose of replacing faculty members, in whole or in part, regardless of the technology utilized.

##### 3. Workload/Teaching Responsibility

- a. Enrollment. Determination of class size for a distance learning class shall be based on pedagogical considerations. Ordinarily, enrollment in a web-based course will not exceed 75% of the average enrollment of those sections of the same course taught in the traditional format during the last offering of the proposed course within a Fall or Spring semester. If the proposed course is a course that has not yet been offered in traditional format at the University, then the Dean shall, at his or her discretion, determine any enrollment limitations; however, the faculty member shall be informed of the Dean's enrollment determinations prior to making a commitment to teach such a course.

- b. Planning first-time teaching of a distance learning course. Training and assistance will be provided by the University as the faculty member is preparing the course and during course delivery. If the faculty member deems it necessary or desirable to obtain further training not offered on campus, he or she may apply for ordinarily available funding.
- c. Workload Issues. Courses taught via distance learning may be included as part of the University faculty member's regular load or may constitute in whole or in part an overload. The teaching responsibilities as they relate to assignments, scheduling, syllabi, papers, tests, and grades shall be equivalent to those of the corresponding traditional course sections.
- d. Travel. The faculty member may be required to travel to distance learning sites off-campus. If the faculty member deems it appropriate to visit an off-campus site, or if the course agreement requires such travel, the faculty member will receive compensation and reimbursement for travel at the normal University rates as stated in the *Faculty Handbook*.

#### 4. Availability of Assistance

- a. The University shall ensure that the necessary technology and equipment are identified and in place.
- b. Provisions shall be made for clerical, technical, library and learning resources support, as they are for other University courses, as well as designated site coordinators for video conferencing.
- c. Assistance will be provided by the University, as it is for other University courses, in developing study guides, teaching aids, and other course materials, and in clearing copyrights for use of material in the course.

#### E. Intellectual Property In Relation To Distance Learning

##### 1. Ownership of Materials

The ownership of materials created by the University faculty member in preparation and delivery of a distance learning course shall be determined by the *Faculty Handbook* Appendix VIII on Copyright.

##### 2. Changing and Updating Materials and Re-transmission of Courses

- a. Courses and course presentations shall not be recorded without prior knowledge and consent of the faculty member.
- b. The faculty member (or multiple faculty creators) who creates the course (or adapts a pre-existing course) for use in distance learning shall exercise control, by written consent, over the future use, modification, and distribution of recorded instructional materials and shall determine whether the material should be revised or withdrawn from use.
- c. Following the third offering of a distance learning course and when the faculty

member determines that a major revision of the course is necessary, the faculty member may apply for a stipend to revise the course. If the faculty member accepts the stipend, the faculty commitment cycle specified in D.1.a. of this agreement begins again.

#### F. Academic Honesty

The University and the faculty share the responsibility for ensuring that students in distance learning courses are held to the same standards of academic honesty as students in traditional courses.

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