

RE-PROPOSAL AND REQUEST FOR COMMENTS (page 1 of 2)

The SCDLel committee wishes to reintroduce changes to AR 7.6 (Intellectual Property). The Senate Council rejected this proposal at its May 13, 2013 meeting because, according to the SC minutes:

The Chair suggested that a more thorough discussion could be had during the SC's June retreat. It was agreed that there needed to be much, much more discussion in various quarters before any overall policy decisions were made. Guest Deaton said she had started reviewing other universities' intellectual property policies for comparison's sake. The Chair thought work on the policy could continue over the summer, perhaps with a formal recommendation to the Regulation Review Committee in the fall.

Nearly three and a half years have passed and AR 7.6 has not been updated to clarify the status of distance learning products. Specifically, it remains unclear whether distance learning and e-learning(DL/eL) products that faculty develop are "traditional products of scholarly activity" in the same category as "journal articles; textbooks; reviews; words of art including paintings, sculpture, and musical compositions; and course materials such as syllabi, workbooks, and laboratory manuals" (AR 7.6 IV.A). Are such products "considered to be the unrestricted property of the author or originator are excepted from the general [IP] policy" and the "University has not and will not claim any ownership rights to such traditional works" (AR 7.6 IV.A)?

One might assume that DL/eL products fall into this excepted category. However, a document titled "University-Level Distance Learning Statements", paragraph 5 says that:

...in cases where faculty members/departments wish to commercialize products developed with DL assistance or wish to transport products to external locations, they must submit the request to the UK Intellectual Property Committee for determination of the University's material interest.

<https://www.uky.edu/universitysenate/sites/www.uky.edu.universitysenate/files/Files/Forms/U-Level%20DL%20Statements.pdf>

This statement suggests that DL/eL products are not excepted from the general IP policy.

The SCDLel committee proposes the following changes to AR 7.6:

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October 10, 2016

AR 7:6.IV was last updated 20 years ago in 1993. Since that time, the instructional products developed by faculty and staff in the course of their usual scholarly, pedagogical, and service activities have expanded to include digital and web-based products, course materials, etc. The committee proposes the following changes in the language of AR 7:6.IV paragraphs A and B.

Draft Changes to Existing AR 7:6.IV.A (insert blue wording) Intellectual Property Disposition and Administrative Regulation

A. Traditional products of scholarly activity which have customarily been considered to be the unrestricted property of the author or originator are excepted from the general policy. Such traditional products include journal articles; textbooks; reviews; works of art including paintings, sculpture, and musical compositions; and course materials such as syllabi, workbooks, and laboratory manuals. Also included are instructional software, webpages, distance-learning course materials, and internet-based instructional products developed by faculty and staff in the course of their usual scholarly, pedagogical, and service activities. The latter include products developed during sabbatical leaves, faculty fellowships, and other special assignment periods intended for such activities. This exemption is also understood to encompass works produced by students, either alone or with the assistance of faculty or staff, if they fall under the foregoing description. The University has not and will not claim any ownership rights to such traditional works and also specifically disclaims any potential rights to do so under the “work made for hire” provisions of the U.S. Copyright Act. Income from the use of such excepted works shall be considered income to the author or originator of said work.

Draft Changes to AR 7:6.IV.B (insert blue wording, delete red wording) Intellectual Property Disposition and Administrative Regulation

B. Works produced wholly by staff or faculty assigned to non-academic support ~~in certain University~~ units of the University whose specific mission includes the production of works for instructional, public service, or administrative use, ~~and who employ staff and faculty for the purpose of producing such works shall not qualify for exclusion under AR 7:6.IV.A above are deemed to be “works made for hire” and,~~ therefore, shall be the property of the University. ~~The Computing Center, the Office of Instructional Resources, and Medical Center Division of Educational and Biomedical Resources~~ UK Information Technology, Distance Learning Programs, and Agricultural Communication Services are examples of such non-academic support units. Works produced by such units include instructional films and videotapes, telecourses, drawings, slides, models, computer programs, etc. ~~The University shall own and control all such works produced in such units.~~ Income from the use of such works in University educational activities shall be considered income to the unit, subject to University resource management and budgeting policy. Arrangements with faculty, staff, or students ~~“talent”~~ from other units or ~~from~~ with personnel outside the University shall require support unit directors to specify clearly in advance and in writing who shall control such jointly-produced works, how such works shall be used, and how potential ~~may include~~ payments based on sales or usage of such works shall be shared. ~~Such payments are considered to be part of the costs of production. Commercialization of such works outside the University must be through assignment to UKRF which shall be responsible for the commercial development as defined in Section VI. However, in recognition of the differences between these units and regular academic departments, different and unique revenue sharing arrangements may be made with the approval of the appropriate chancellor.~~ Nothing in this paragraph shall limit the rights of the employees of such units to works produced or developed outside the scope of their employment and not involving the use of University facilities or other resources.