GUIDANCE FOR ON-LINE NOTE SHARING SERVICES INVOLVING CLASSROOM MATERIALS

The Office of General Counsel regularly receives requests for advice regarding students' usage of on-line note sharing services. The scenario typically involves a student who sold class material which is posted on a commercial note-sharing site, and the faculty member wishes to know how to get the material removed. We are providing this guidance to provide some basic information on what can be done to resolve the situation. As we'll explain below, the faculty member's options are based upon the ownership of the material which can be determined through the University's intellectual property policy.

A. What is intellectual property and copyright law?

Intellectual property refers to intangible "property" which is produced by human creativity and is protected by the law. There are numerous different types of intellectual property including copyright, patent, trademark and trade secrets. Because intellectual property is intangible (unlike a house or automobile), its entire existence and nature is defined by the various laws and judicial decisions which have created it.

Written classroom materials typically involve copyright protections. The U.S. Copyright Office provides the following definition of a copyright:

> A Copyright is a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of "original works of authorship," including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:
>
> > To reproduce the work in copies or phonorecords;
> >
> > To prepare derivative works based upon the work;
> >
> > To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
> >
> > To perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;
> >
> > To display the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and
> >
> > In the case of sound recordings*, to perform the work publicly by means of a digital audio transmission.

Copyright is commonly associated with the production of written works such as books, articles, etc. However, copyright protection applies to many different types of creative works such as recorded music, photographs, artwork, etc. Copyright protection is created instantaneously when a work is fixed in a tangible medium. Prior to the time that it is fixed in a tangible medium, copyright protection does not apply.

B. Does Miami University have a Copyright Policy?

The University's policy on copyrights can be found at Section 15.6.B of the Miami University Policy and Information Manual (http://www.miami.muohio.edu/documents/secretary/MUPIM.pdf). Generally, the University recognizes that a faculty member, staff member, or student owns his/her own work unless (1) the work was created pursuant to an external grant or contract, or specified in the terms of a gift, under which the copyrightable material was produced, or (2) if the work was created in the course of performing an explicit University assignment or commission to create such a work. There are separate rules pertaining to the creation of an on-line class.

C. Who Owns Written Classroom Materials?

The University has interpreted its copyright policy to mean that written classroom materials created by a faculty member for a class (*e.g.,* written presentations, hand-outs, tests, etc.) belong to the faculty member except for the University's right to use the materials for its administrative and legal needs. As such, these materials may not be used by the students in any way that would violate the copyright laws unless specifically authorized by the faculty member. However, oral lectures are generally not protected by copyright law because copyright protection does not apply until an idea is put into tangible format (*i.e.,* written or recorded).

The University's copyright policy also establishes that students own the copyright to their own materials. This creates an interesting issue at the interface between a professor's oral lecture and a student's written note-taking. First, copyright does not typically apply to an oral lecture which means that copyright does not apply unless the lecture was recorded or read verbatim from a script written by the faculty member. Secondly, even if the lecture were copyright-protected, the student's own creative interpretation of the materials may be sufficiently original to constitute a new, original copyright-protected work. This means that the determination of whether a student's writings are copyright-protected is not easily determined by a bright-line rule but instead is going to be based upon the facts of the particular situation.

D. Can a Student Be Disciplined for Selling a Faculty Member's Classroom Materials?

A student who violates the copyright law could potentially be charged under the Code of Student Conduct, including 2.1.D Damage, Theft, or Unauthorized Use of Property; 2.1.J Violation of Law; and/or 2.1.L Abuse of Computing Resources. However, in many cases, students may not recognize that their acts violate the faculty member's copyright and a simple conversation with the student is all that is necessary to remedy the situation. In those cases where the faculty member does not believe a conversation will adequately address the issue (*e.g.,* intentional, repeated or flagrant violations), a faculty member should consult with the Office of Ethics and Student Conflict Resolution (529-1417) to explore the option of initiating disciplinary action against the student. In some rare instances, the student's actions may constitute academic misconduct if the student has posted quizzes, tests or exams contrary to the faculty member's instructions.

E. What Steps Can Be Taken to Protect Classroom Materials From Infringement?

1. Classroom Notification.

Faculty members should include a statement in their syllabi regarding the fact that selling course material is illegal and will not be permitted. For additional emphasis, faculty members should consider announcing this fact at the beginning of a class. Proposed language for syllabi:

> **Course materials provided to you, including presentations, tests, outlines, and similar materials, are copyright protected by the faculty member(s) teaching this course. You may make copies of course materials solely for your own use. You may not copy, reproduce or electronically transmit any course materials to any person or**

company for commercial or other purposes without the faculty member's express permission. Violation of this prohibition may subject the student to discipline/suspension/dismissal under the Miami's Code of Student Conduct or Academic Integrity Policy.

2. Copyright Notices.

Faculty members can include a copyright notice on their course materials. Although a copyright notice is not required for copyright protection, it does put a reader on notice that the material is protected. The proper method for putting a copyright notice is: "© [Year] [Owner's Name]". For example, you may have noticed the bottom of the University's website pages read: "© 2012 Miami University".

F. What Should a Faculty Member Do When Course Material has Been Found On-Line?

If you have found your material on a website, such as *notehall.com* or *studyblue.com,* you need to find the website's instructions for how to file a notice of infringement. On notehall.com's site, you have to click on the "Terms and Conditions" section of their homepage, and on studyblue.com's homepage you will find a link to "Terms of Use." Located within these terms are the procedures to follow for notifying the site of the problematic material. A proposed text of an email would be:

VIA EMAIL TO _____

Re: Copyright Infringement

Dear Sir/Madam:

I am writing to notify you of unauthorized posting of my copyrighted material on the notehall.com website. I have a good faith belief that the following material is owned by me, and I am hereby requiring **[e.g., notehall.com or studyblue.com]** to immediately remove the material and destroy all copies of the material in its possession. The material is located at the following URL addresses:

1.
2.
3.

It is my hope and expectation that notehall.com will voluntarily comply with the law and abide by the terms of this email. However, if this illegal infringement continues, I reserve the right to pursue all legal rights available to me.

In the event that this initial process fails to remedy the problem, please contact the Office of General Counsel.