

# At a Distance: Articulating A Higher Ed Perspective on Remote Instruction

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Teaching, Learning, and Creating Equity at a Distance



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## Land acknowledgement

Before I begin, I need to say that while we are meeting in this virtual space from many geographic locations, I am myself physically located at this moment within the unceded territory of the Ute Peoples. The earliest documented people in this area also include the Apache, Arapaho, Comanche, and Cheyenne. An extended list of tribes with a legacy of occupation in this area can be found here: [Colorado Tribal Acknowledgement List](#).

## Things we might talk about

- **Academic freedom** and the universal switch to remote learning, including issues around recordings of classes and IP rights
  - ▶ *fixed in a tangible medium of expression and works for hire*
- **Shared governance** was there faculty decision-making – or even *consultation* – about the transition?
  - ▶ LMSes are to faculty what invasive proctoring software is to students ... and both are *awful*
- **Security of employment/tenure**, particularly new financial challenges which accelerated adjunctification, precarity, and even all-out assaults on tenure.
  - ▶ IP rights for adjuncts

## A warning: IAmNotALawyer

Although I will be talking about some legal issues,

**I am not a lawyer.**

Even were I a lawyer, in situations like this presentation,

**I would not be your lawyer.**

(Not because I don't like you, but because that's the way legal representation works.)

# What is academic freedom, and [why] do we deserve it?

*Institutions of higher education are **conducted for the common good** and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the **free** search for truth and its **free exposition**.*

*Academic freedom is essential to these purposes and applies to both teaching and research. **Freedom** in research is fundamental to the advancement of truth. Academic **freedom** in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning.*

*emphasis added*  
American Association of University Professors  
1940 Statement of Principles on Academic Freedom and Tenure

# The Copyright Clause

Article I, Section 8, Clause 8. the *Copyright Clause*, of the US Constitution, gives Congress the power

*“To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”*

This *exclusive Right* includes: performance, public display, copying, distribution, and creation of derivative works.

See my [Copyright Cheat Sheet For University Faculty](#) for one academic's<sup>1</sup> explanation of many aspects of copyright law.

The *limited Times* have been changed – extended! – again and again by Congress. Currently in the US, copyrights last for the life of the author plus 70 years ... but there are many details to consider, including exceptions such as *fair use*.

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<sup>1</sup>Not a lawyer!

## Fixation and works-for-hire

Three really important things to know about copyright:

**It's [nearly] automatic:** In the US, the moment a work with some level of originality – and the barrier is very, very low here – is “*fixed in a tangible medium of expression*,” it is copyrighted.

↪ The creativity in your lectures is not copyrighted unless you, or someone else, records them!

**Your employer may own the copyrights on your works:** Under §101 of the [U.S. Copyright Act](#), the copyright to “a work prepared by an employee within the scope of his or her employment” belongs to their employer.

↪ Under the “traditional academic exception to the works-for-hire doctrine,” academics are often exempted from this provision.

↪ Since works-for-hire is the default, you must check your contract to see if you are explicitly granted the exception.

# Colorado State University Pueblo's IP policy 1

From our *Faculty Handbook*, which is also incorporated by reference into our contract of employment.

## **“2 Faculty Personnel Policies**

### **2.6 Working Conditions**

#### **2.6.1 Rights and Responsibilities Related to Creative Work**

##### **2.6.1.1 General Policy**

*Inventions, Academic Materials, Publications, and other creations hereafter referred to as Works, are the natural outgrowth of activity in teaching, research, and service. University academic faculty, administrative professionals, state classified staff, student employees, and anyone affiliated in a professional capacity with the University and using University Resources, who are inventors and creators (hereafter referred to collectively as Members), shall provide notification of their creation of Works to the appropriate administrator(s) and indicate their association with the University in all professional Publications.”*



## Colorado State University Pueblo's IP policy 2

*"In the interest of encouraging the development of new and useful scholarly material and the publication of such works, the University will continue the tradition of not claiming ownership or a share of the proceeds from scholarly works such as Academic Materials, textbooks or their equivalent not supported through the use of University Resources as defined below or expressly commissioned by the University, popular or scholarly nonfiction novels, poems, sculpture, musical compositions, or other artistic works. A faculty members general responsibility to produce scholarly and creative works does not constitute an express commission of Works. Subject to the use of such courses for continuing or distance education purpose, (see Section 2.6.1.12.3) members are sole copyright holders of their own lectures and any publication, recording, or broadcasting of lectures must be authorized by the Members concerned."*

Sounds good, or?

### **"2.6.1.3 Ownership and Rights**

*Ownership and rights to Works having potential monetary or commercial value depend on the origin, type and amount of resources used in the creation of Works. The Provost or Designee is responsible for making ownership and licensing decisions for works pursuant to Section 2.6.1.... The following provisions shall govern the ownership of Works:*

#### **2.6. 1.3.1 Works Supported by the University**

*With the exception of Academic Materials not supported through the use of University Resources, works developed using University Resources or reduced to practice in the course of a Members University responsibilities and those expressly commissioned by the University **shall be the property of the University and the Members who created them...."***

Definitely not good. And seems to contradict the earlier statement.

## Colorado State University Pueblo's IP policy 4

The language makes it clear that contingent faculty essentially *never* own the rights to their works.

[Sometimes that is done by noting that the handbook, or a section thereof, applies only to employees of “faculty rank,” from which contingent faculty are excluded – despite the AAUP’s position on long-term contingent faculty!”]

This handbook language is typical across academia. It is often written by campus General Counsels who have little training in IP law.

Go check your contract!

## A modest proposal

One consequence of the above can be that “road warrior” adjuncts cannot use their own curricular materials when moving from institution to institution.

A solution could be to require all curricular materials which fall under the works-for-hire doctrine to be publicly licensed.

In the Open Access movement, it was said that “research funded by public funds should appear in open fora,” and the OA folks won that fight (e.g., NIH-funded research, etc.). I would instead say

**Publicly funded curricular materials should be released with an open license**

(For more on what is open licensing, see, e.g., my [Creative Commons Cheat Sheet for University Faculty](#).)

# Discussion!!

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<sup>2</sup> subject to CC-BY-SA