

POLICIES

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Responsible Official: Provost and Vice President for Academic

Official: Affairs

Responsible Office: Office of Distance Education

Policy Statement

It is the policy of Austin Peay State University that distance education offered by the University will meet the academic requirements and quality standards when delivering the course.

Purpose

Distance education is an established and effective method for extending educational opportunities. To provide the citizens of Tennessee with greater access to postsecondary education, the Board of Trustees affirms the effectiveness of distance education, recommends the use and development of distance education technologies, and encourages the University to take advantage of such opportunities in carrying out the mission of the University.

Definitions

Distance Education

Distance education occurs:

- Where there is a physical separation of the teacher and the learner and when communication and instruction take place through, or are supported by, any technological means such as telephone, radio, television, computers, satellite delivery, interactive video, or any combination of present and future emerging technologies. Interaction between teacher and learners may be synchronous or asynchronous.

Copyright

- Under Federal law, copyright applies to any "original work of authorship fixed in any tangible medium of expression." (17 U.S.C. § 102(a)).
- Generally, the owner of a copyright has the exclusive rights to reproduce the work, to prepare derivative works, to

distribute copies by sale or other transfer of ownership, and to publicly display or perform the work. (17 U.S.C. § 106).

Work Made for Hire

- An employer owns the copyright to a work of authorship when the work was created by an employee within the scope of his/her employment.
- Some kinds of work can also be owned by the institution as a work made for hire if it is specially ordered or commissioned under a written contract signed by the two (or more) parties. (17 U.S.C. § 101, § 201 (b)).

Fair Use

The Copyright Act provides for some exceptions to the exclusive rights of the copyright owners.

- One of these exceptions permits fair use of a copyrighted work for purposes such as teaching, scholarship, or research. (17 U.S.C. § 107).
- The four factors to be considered in determining fair use are:
 - The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
 - The nature of the copyrighted work;
 - The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 - The effect of the use upon the potential market for or value of the copyrighted work.

Joint Work

A work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole. (17 U.S.C. §101).

Collective Work

Work such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole. (17 U.S.C. § 101).

Compilation

A work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works. (17 U.S.C. § 101).

Procedures

Applicability of Board Policies

- A. Unless otherwise provided, all Board, accrediting agency, and institutional policies, standards, and guidelines for on-campus instruction apply to distance education instruction.

Funding Distance Education

- A. For the purpose of reporting and appropriations, no distinction shall be made between student credit hours generated through distance education and those generated through on-campus instruction.
- B. The University will budget for the acquisition and maintenance of distance education hardware and courseware and will maintain careful records of all operating costs.

Administration of Distance Education

- A. The University should develop specialized policies and procedures relating to issues of distance education delivery and administration specified by this policy, accreditation criteria, and other University policies.
- B. The University shall ensure compliance with all applicable copyright laws concerning the reproduction of printed materials and the use and transmission of films, filmstrips, videotapes, recordings, performances, or other protected works.

Academic Standards

In establishing policies and procedures, the following stipulations shall apply:

1. Each distance education course offered must be consistent with the level, nature, and mission of the University.
2. When a course is offered through distance education, it will carry the same code, title, and credit as other sections of that course.
3. Each distance education course must provide for interaction and timely feedback between students and faculty member(s) teaching the course.
4. As appropriate, these interactions may be individual, group, or mixed.
5. They may take place electronically, e.g., by telephone, by computer, or by interactive video.
6. Each distance education course must include an assessment of that delivery mode in its procedures for monitoring and assessing student performance.
7. Each student enrolled in a distance education course shall have access to all the academic support services, instructional equipment, and campus events and other non-academic activities, which the institution provides for other students.

8. Support services may include but are not limited to academic advising, counseling, library and other learning resources, tutoring services, and financial aid.

Program Planning and Implementation

University policies and procedures must contain a written statement of the purpose and goals of the distance education program and describe the assessment methods used to evaluate the success of the program in carrying out those goals and objectives. The following issues must be addressed as the University plans and implements the distance education program:

1. Faculty, administrators, and other support personnel involved in the development and implementation of distance education must have clearly defined roles, responsibilities, and duties.
2. Faculty involved in distance education must receive specialized training in the use of the medium.
3. The University will determine teaching load equivalents and faculty compensation for distance education.
4. The University must make academic and administrative information available to distance education students.
5. This information may include but is not limited to: exams, grading, student-faculty interaction, proctoring, the provision of support services, and registration and fee-payment procedures.
6. Censorial arrangements among two or more institutions for the development, production, or transmittal of distance education courseware and materials should always be considered.
7. Whenever possible and to effect the greatest savings, the acquisition of courseware should be made through the Tennessee Board of Regents' Media Consortium.

Ownership of Copyrightable Materials

A. General Policy

1. APSU Policy 2:047 on Intellectual Property, Patents and Copyright provides the overall guidance for ownership of copyrightable materials. The University has an interest in the copyrightable materials if:
 - a. The University sponsors the project; or
 - b. There is significant use of the University's facilities, services, or equipment in the creation of the work; or
 - c. The project is sponsored through the University by agencies or persons outside the University. (The contract terms of externally sponsored projects will control ownership of work done pursuant to the contract or grant.)
2. Policy 2:047 gives ownership to faculty of their "scholarly and creative works."

- a. Under this Policy, a faculty member or other institutional employee also retains title to the copyrightable work if the work was developed solely through individual work on personal time.
3. Policy 2:047 defines "significant use" of institutional resources as cost to the institution in the amount of \$1,000 or more (In constant 1982 dollars). This equates to about \$1,650 in 1999.
 - a. Use of office personal computer alone is not considered a significant use of university resources.
 - b. This policy provides more specific policies about copyright ownership in the context of distance education.

B. Scholarly Works

1. APSU wishes to encourage scholarly works. Therefore, APSU will not assert an interest in scholarly works and creations related to the faculty member's professional field. These include:
 - a. faculty authored textbooks
 - b. scholarly writing
 - c. art works
 - d. musical compositions
 - e. dramatic and non-dramatic literary works
2. Distance education, telecourse, and/or multimedia materials that are in the nature of scholarly works created by faculty under the same circumstances that would lead faculty to create more traditional scholarly works will be treated as scholarly.
3. Scholarly work in this context would include course materials created by the faculty when the factors listed in C and D, below, are not applicable.
4. If the University wants to use such a work and/or share in its commercialization, the institution should secure the desired rights in a contract with the faculty member.

C. Student Work

1. This policy does not apply to undergraduate or graduate students in the absence of an employment or other contract.
2. Generally, ownership of student works is controlled by copyright law.

D. Works for Hire

1. It is very important to have a written agreement assigning responsibility and rights at the beginning of a project.

E. Scope of Employment

1. The University will have sole ownership of intellectual property created by its non-faculty employees within the scope of employment.
 - a. For example, if the University employs a non-faculty person to design a computer program or to develop a promotional video, the copyright to the program or video belongs to the institution.
2. The University should ensure that the job description for each relevant non-faculty position includes the creation of or the assistance with the creation of distance education materials.
 - a. The University should also be certain to add to the employment contract, either on initial hire or with contract renewal, language which specifies that such works are made in the scope of employment.
 - b. In cases where there is a new assignment to the employee, an agreement in writing signed by both the employee and an institutional representative is strongly urged.
3. Distance education materials created by faculty members will be solely owned by the University where:
 - a. The faculty is required to create the materials for a specific class or department by written institution or department policy e.g. (Common core course requirement);
 - b. The faculty member is given release time to create the materials; or
 - c. The faculty member is employed to create specific intellectual property/distance education materials.
4. In all cases, the institution and the faculty member should sign a "Work for Hire Acknowledgment Form"

F. Commissioned Work

1. Under the Copyright laws, (17 U.S.C. § 101, § 201) a work specially ordered or commissioned is owned by the institution if the parties expressly agree in a written instrument signed by both parties that the work will be considered a work for hire.
2. Commissioned work is limited by the Copyright law to contribution to a collective work, part of a motion picture or other audiovisual work, a translation, a supplementary work, a compilation, an instructional text, a test, answer

material to a test, or an atlas. (17 USC § 101, "Work For Hire" definition).

G. Joint Ownership

1. Works may be created through the joint efforts of two or more faculty members or of faculty and non-faculty employees working in the scope of their employment or working under contract to provide services.
2. Anyone who contributes the kind of expression protected by the copyright law is a joint author if the contribution is intended to be part of an integrated whole.
3. The University will be the sole owner if all the work is done as work for hire.
4. The University and the faculty member may be joint owners of the final product if a faculty member works independently but incorporates work done as work for hire by University employees and/or contractors.
5. It is VERY IMPORTANT at the beginning of the project to state the contributors' intentions in a written contract signed by all contributors.
6. The Office of Legal Affairs should be consulted to assist in contract drafting.

H. Revision Rights

1. A faculty member should normally retain the right to update, edit or otherwise revise electronically developed course materials that become out of date, or, in certain circumstances, should place a time limit upon the use of electronically developed course materials that are particularly time sensitive, regardless of who owns copyright in the electronically developed course materials.
2. These rights and limitations may be negotiated in advance of the creation of the electronically developed course materials and may be reduced to writing.
3. Absent a written agreement, each faculty member will have the right and obligation to revise work on an annual basis in order to maintain academic standards.
4. If a faculty member does choose to revise the work and such revision is done in a satisfactory manner, the faculty member retains the rights to full royalties as discussed below for another year.
5. If the University believes a revision is necessary and no revision is made or if the revision made, in the institution's opinion, does not maintain academic standards, the institution may refuse to market the

product, or the institution may employ another person to update the work and charge the entire cost of the revision against any royalties paid to the original author.

I. Royalties

1. Royalty division should generally reflect the relative contributions of the parties.
2. In accordance with APSU policy, faculty members shall receive all royalties that may accrue from the commercialization of electronically published course materials they create on their own initiative.
3. On the other hand, the University retains all royalties that may accrue from the commercialization of electronically published course materials created by faculty members pursuant to contract or as a work for hire, including electronically published course created as a condition of employment.
4. Copyright law permits joint owners to pursue commercialization either jointly or separately, with accounting. Other circumstances may require review on a case-by-case basis (such as the creation of electronically developed course materials initiated by a faculty member but using substantial institution facilities.)
5. In instances of joint ownership between faculty members where the University also retains rights to royalties, the faculty members shall determine by written document the division of royalties.
6. Absent a written document of division of royalties, the faculty members shall divide their share pro rata based on participation.

Revision Dates

APSU Policy 2:013 – Issued: March 25, 2017

Subject Areas:

Academic	Finance	General	Human Resources	Information Technology	Student Affairs
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Approved

President: signature on file

