

From: Bryon Clark
Sent: Tuesday, October 03, 2017 12:24 PM
To: Daniel Althoff <DAlthoff@se.edu>
Subject: RE: Clarification from RUSO Counsel

Dan:

Please find attached the proposed amendment to APPM Section 7.10.3 Intellectual Property that I received from Dr. Emge in Spring 2017. This version is different than the one considered by the Academic Council on 11-30-2016 and the revised version approved by the DEC on 2-28-2017. Since both entities were originally involved in the policy revision process, would it would be more inclusive to have both the DEC and Academic Council consider the Faculty Senate version of the proposed policy revision?

Please note that my original interaction with General Counsel for RUSO regarding this policy also pertained to an earlier version of the document (see third attachment that includes General Counsel's comments). My subsequent interaction with RUSO General Council was verbal and centered around changes made to the draft he reviewed that were included in the Faculty Senate document (see first attachment). One concern is the second sentence in the second paragraph of the Faculty Senate version that states *"When Southeastern allows someone other than the author to view or show content, for the sake of evaluation and/or accreditation, the instructor shall be notified prior to accessing the LMS."* This caveat was not in earlier drafts and represents a significant change. This change poses an impediment to several university processes that, at least in certain instances, require unfettered viewing access to materials in the LMS.

There is a fundamental difference between "using" and "viewing" intellectual property, including content stored within the LMS. Without doubt, safeguards against inappropriate "use" of intellectual property are of utmost importance in higher education (as well as elsewhere) and this policy provides that protection. However, "viewing" of such material without prior notification is an important element of many critical university processes (e.g., accreditation, specialty accreditation, instructional program management, investigations of complaints/grievances). It is important to note that even if individuals "view" materials considered intellectual property during these processes without providing prior notification, they cannot subsequently "use" the material in a manner that is not consistent with other sections of this policy.

Listed below is a potential draft for the second paragraph that hopefully distinguishes between "view" and "use" of intellectual property.

"Southeastern retains the right to view content, including that which is stored within the LMS, for the sake of university processes such as, but not restricted to, accreditation, specialty accreditation, instructional program management, and investigation of complaints/grievances. Individuals who view such works during these processes may not subsequently use the materials for other purposes without obtaining written permission of the author."

I also would suggest that the third paragraph of the Faculty Senate version be modified to include authors (*"Users and authors may not alter or delete..."*). I believe the intent of this paragraph is to memorialize the LMS course content until the end of the appeal process; therefore, no one, including the author, should be allowed to change the LMS content of a previously taught course until the timeframe for an appeal is exhausted.

Please feel free to contact me if you have questions or wish to have additional information.

Cordially,

Bryon