



Canadian Association of University Teachers
Association canadienne des professeurs et professeurs d'université

Memorandum 15:18

Date: August 18, 2015

To: Presidents and Administrative Officers,
Locals, Provincials and Federated Associations

From: David Robinson, Executive Director

Re: **Commercial course content web sites**

Over the last few years course content aggregators such as OneClass and Course Hero have emerged, companies whose business consists largely of selling material related to specific courses to university and college students. OneClass, for example, has created an on-line database containing tests, lab reports, class notes and other documents. The material is collected by students who supply it to the company in exchange for gift cards (Starbucks, Amazon, etc.). Individuals who wish to access the material purchase a subscription to the site.

Harm

OneClass uploads and sells documents without the permission of, or payment to, the academic staff member responsible for the original creation of the material. In some circumstances, this activity could constitute copyright infringement. The OneClass model also raises academic issues associated with the mass, unauthorized recording and reproduction of classroom speech.

Copyright

Copyright protects “works” – the fixed expressions of literary and artistic creativity. Content such as slides, videos and lab manuals typically meets this definition. Anyone offering this material for sale without the owner’s permission may be infringing copyright. The existence of copyright in lecture presentations is less certain. The act of a professor reading directly from their notes may constitute a performance, which is a work subject to copyright protection. If the lecture is delivered extemporaneously, or loosely from prepared text, copyright is less likely to apply as that presentation may not constitute a performance (as legally defined) and no work subject to copyright has been created. Beyond how the lecture is delivered, the manner in which it is recorded is also important. Notes prepared by a student that summarize a lecture (even one that constitutes a performance) are not likely to infringe copyright. The creation and distribution of a verbatim transcript of a lecture performed directly from prepared text may constitute the unauthorized reproduction of a work.

Complicating things further, even if course material gathered by a student and circulated by OneClass does constitute the reproduction of a work, claims of copyright infringement may still be defeated by fair dealing. Fair dealing is a legal right that allows a work to be reproduced without permission or payment in certain circumstances. Whether fair dealing exists in a particular case depends on the amount and manner of the copying and existing custom and practice. Were copyright litigation against OneClass to proceed, courts would recognize the long-standing custom of students sharing course notes, the accepted practice of recording and transcribing lectures to accommodate students with special needs, as well as the growing interest in open access material and the exercise of fair dealing for educational purposes.

In this context, succeeding in an infringement case against a company such as OneClass would be challenging, but not impossible. Fair dealing aside, repertoire consisting of student summaries of lecture presentations seems shielded against claims. Voice to text transcripts of read (not extemporaneous) lectures would make a better target as would copies of material such as tests, exams, slides and lab manuals.

Academic Concerns

Aside from intellectual property the OneClass business model raises a number of academic issues. The first is self-censorship. While student notes that misquote or misrepresent the content of a lecture are not new, the knowledge that such errors could be compounded by their posting on a website may have a chilling effect on classroom speech, undermining academic freedom. The distribution of tests and lab material may also harm the approach to learning adopted by a teacher in a particular class by, for example, the premature or unanticipated distribution of course material. The widespread availability of lecture notes may encourage non-attendance in class.

Inducements to students to post material to OneClass may also undermine collective agreement rights governing classroom conduct - such as prohibitions on the recording of lectures. More generally, at a time when the crucial connection between academic staff and their courses is being undermined by casualization, commercialization and the move to on-line education, the presence of OneClass and others further commodifies teaching material. In response, employers acting under the guise of defending institutional integrity may seek greater control of course material, further stripping academic staff of intellectual property rights and workplace autonomy.

Action

The first step in defending the rights and interests of academic staff in these circumstances is to inform association members of the existence of course content aggregators such as OneClass and educate them about the concerns such businesses present. Attached to this memo is a pdf fact sheet that your association can distribute to members.

The second step is to encourage individual academic staff members to:

- visit the websites of course content aggregators to ascertain if material from their courses is present;
- make direct inquiries to the business about the presence of their material; and
- request that the material be removed from the website.

The third step is to review your institutional policies and collective agreements language on classroom recording, and raise the enforcement of such language with the employer. If relevant language does not exist, consider collective bargaining solutions, for example negotiating collective agreement prohibitions on students recording and sharing course materials for any other purpose than personal use.