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Intellectual Property Policies Concerning Ownership of Faculty-Created Online Course Materials in Public Higher Education Institutions

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Intellectual Property Policies Concerning Ownership of Faculty-Created
Online Course Materials in Public Higher Education Institutions

by

Tracey S. Makley

A dissertation submitted to the College of Education and Human Services
in partial fulfillment of the requirements for the degree of
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Abstract

The purpose of this study was to identify the key components of the policies that designate ownership of faculty-created online course materials at public higher education institutions that offer distance education in order to establish the key components of those policies and learn how they differ within higher education institutions. The researcher utilized a document analysis procedure with both qualitative and quantitative characteristics to identify the key components of the policies under consideration. The findings of the study demonstrated that there are a wide variety of ownership policies in place, but the content of the policies generally fit into six categories: (a) types of ownership; (b) financial considerations; (c) control of faculty-created content; (d) underlying rationale for claiming ownership of content; (e) settlement of disputes; and (f) disclosure and assignment of rights. Moreover, the results of the study demonstrated that many institutions seem to believe that the teacher exception to the U.S. Copyright Law no longer applies. Indeed, recent court cases have shown that the courts look to the institution’s intellectual property policy when deciding questions of ownership. Furthermore, some courts have ruled that the policies need to be signed by both the institution and the faculty in order to be enforceable. The study demonstrated that some institutions have made note of this requirement and they have begun to require faculty to assign title to the institution for material that the policy designates as institution owned. The author includes recommendations for creating or updating intellectual property policies that were based on the review of literature and the results of this study. Further recommendations are provided for future research related to faculty motivation to teach distance education, intellectual property policies regarding student-created material, and research examining how these policies develop and change over time.
Chapter 1: Introduction

One of the fastest growing segments in higher education today is distance education. As of Fall 2014, there were over 5.8 million students enrolled in at least one distance education course, and the number of students enrolling in distance education is expected to increase (Allen & Seaman, 2015; Poulin & Straut, 2016). However, faculty in higher education institutions hold a negative view of distance learning, which can affect the success of an institution’s distance learning program (Herman, 2013; Hoyt & Oviatt, 2013; St. Phard, Jr., 2015; Tabata & Johnsrud, 2008). One element that has been identified as an important aspect of faculty motivation to develop or teach distance education is the question of ownership of faculty-created materials, which has been debated by a number of leading higher education organizations. An examination of the literature demonstrated that there are few empirical studies on copyright policies in higher education institutions and that those that have been done are dated. According to Rooksby (2016b), the lack of recent empirical studies in the literature regarding copyright prohibits an understanding of how administrators make decisions regarding copyright ownership and use of copyrighted materials. Hence, there is a need to study the components of the intellectual property policies that designate ownership of faculty-created materials and to determine how these components vary within public higher education institutions, which is what this study seeks to do through document analysis. The results of this study could be used by faculty and administrators as a resource when crafting or updating an intellectual property policy for their institution. In addition, this study could serve as an update to the current literature on intellectual property policies and it could be used as a reference for future studies to examine changes to intellectual property policies in public higher education institutions.
Need for Study

From its inception, distance education has been viewed as a channel through which education could be made available to those without access to higher education resources (Berge, 1998; Kentnor, 2015; Kranch, 2008; Minaar, 2013). In its modern online incarnation, distance education is still seen as a vehicle for increasing access to higher education, but it also allows students more flexibility with regard to time and place (Amiel & Orey, 2006; Berge, 1998; Moloney & Oakley II, 2010). According to Moloney and Oakley II (2010), demand for online education has grown steadily over the past decade and it continues to grow. However, they caution that “the largest demand may lie ahead, as the “digital natives” enter higher education” (p. 89). Although there is still an underlying interest in providing access to higher education, many institutions have implemented distance learning programs in order to increase revenue and remain competitive (Minaar, 2013; St. Phard, Jr., 2015; Tabata & Johnsrud, 2008). The reason that higher education institutions are seeking new sources of revenue is because state funding for these institutions has declined (Kranch, 2008; Lape, 1992; Longstaff, 2014; Maguire, 2005; Nelson et al., 2014; Ortagus & Stedrak, 2013; Styron et al., 2009). Specifically, Klein and Blanchard (2011) state the following:

State governments are spending smaller portions of their budgets on higher education.

The percentage of state and local revenue allocated to higher education decreased 5.6% nationally between 1997 and 2007. In 2010, total state funding for higher education was approximately $1.4 billion less than what states provided in 2008. (p. 391)

In addition, Allen and Seaman (2013) report that “in 2002, less than one-half of all higher education institutions reported online education was critical to their long-term strategy. That number is now close to seventy percent” (p. 4). Hence, distance education has become a crucial
stream of revenue for higher education institutions that has been included in the strategic plan of the majority of higher education institutions.

In response to the increased demand for online education and the need to increase revenue, the number of higher education institutions offering online courses has grown rapidly (Kentnor, 2015; Longstaff, 2014; Maguire, 2005; Minaar, 2013), but this rapid growth has led to a number of issues. One important issue that institutions are grappling with is the issue of who owns online course content. According to Nash (2015), “The US is currently the country with the most successful online programs in the world” (p. 86). Because the U.S. has been so successful with online education, Nash posits that there are needed changes within online education and that those changes should begin in the U.S. One of the changes needed in online education lies with the policies regarding ownership of online course material.

In response to the ambiguity surrounding course content ownership, many institutions have created, or are in the process of creating, institutional policies to determine ownership, although there are still some institutions with no formal policy (Blanchard, 2010; Kelley, Bonner, McMichael, & Pomea, 2002; Lape, 1992). In addition, the ownership debate has trickled over into the traditional classroom as more faculty are creating course materials designed to be delivered online as a supplement to their traditional courses (Welsh, 2000). The implication for higher education institutions is that faculty may be resistant to developing online courses if the copyright ownership will be vested in the institution (DiRamio & Kops, 2004; Twigg, 2000; Zhang & Carr-Chellman, 2006). In order to foster faculty participation in developing and teaching online courses, McNeal, Jr. (2015) recommends that the ownership question is “something that should be explicitly addressed to foster online course development” (p. 50).
Rooksby (2016b) points out that there are very few empirical studies regarding copyright in higher education institutions. Furthermore, he states that this gap in the literature prohibits understanding of how administrators make decisions regarding copyright ownership and use of copyrighted materials. Although both the copyright ownership question and the copyright use question are worthy of study, this study will focus on the copyright ownership question because of its importance in motivating faculty to develop and teach distance education courses. Another reason why this study will focus on the copyright ownership question is because the few empirical studies on copyright policies in higher education institutions that have been done are dated, so there is a need to establish the current landscape of those policies (Rooksby, 2016b).

Statement of Problem

In response to the increased demand for online education, the number of higher education institutions offering online courses has grown rapidly (Kentnor, 2015; Longstaff, 2014; Maguire, 2005). Furthermore, distance education has become integral to the long-term growth strategy of many higher education institutions (Allen & Seaman, 2015). This strategy is especially important for the growth and survival of higher education institutions considering that student enrollment in distance education courses has continued to grow even as overall enrollment in higher education institutions has declined (Poulin & Straut, 2016). However, one issue that has become increasingly important in higher education is the question of ownership of faculty-created online course content. In response to the ambiguity surrounding course content ownership, many institutions have created policies to delineate ownership (Blanchard, 2010; Kelley, Bonner, McMichael, & Pomea, 2002; Lape, 1992). The claims of ownership that institutions are placing on faculty-created material has led to conflict between faculty and their institutions, which can have significant implications for higher education institutions because
faculty involvement affects the successful implementation of distance education programs (Hoyt & Oviatt, 2013; Shea, 2007; St. Phard, Jr., 2015; Tabata & Johnsrud, 2008). A review of the literature demonstrated that there is very little research regarding the contents of intellectual property policies. According to Rooksby (2016b), the lack of recent empirical studies in the literature regarding copyright prohibits an understanding of how administrators make decisions regarding copyright ownership and use of copyrighted materials. This study seeks to fill in this gap in the literature by examining the policies of public higher education institutions that provide distance education in order to establish the key components of those policies and learn how they differ within higher education institutions.

**Significance of Study**

This study would be of interest to both faculty and administrators in public higher education institutions. Despite the growth of distance education in recent years, there have been very few studies that examined the content of the intellectual property policies of higher education institutions (Rooksby, 2016b). This study could be used by faculty and administrators as a resource when crafting or updating an intellectual property policy for their institution. In addition, this study could serve as an update to the current literature on intellectual property policies and it could be used as a reference for future studies to examine changes to intellectual property policies in public higher education institutions.

**Research Question**

A review of the literature indicated that there is very little research regarding ownership of online course materials in public higher education institutions. Of those studies, most of the researchers focused their efforts on doctorate granting institutions. Although it is useful to know what types of policies are in place at doctorate granting institutions, this leaves a gap in the
literature regarding the policies at public higher education institutions as a whole. Two of the previous studies did select their study sample from different types of higher education institutions, but those studies were survey studies, which may not accurately reflect the content of those policies. The lack of research in this area led to the development of the following research question:

1. What is the differentiation of public university policies concerning ownership of course content of online classes developed by faculty?

Scope of Study

The scope of this study will include the intellectual property policies at public higher education institutions that provide distance education. The population for this study was narrowed to public institutions providing distance education for three reasons. First, the majority of distance education is provided through public higher education institutions (Allen & Seaman, 2015, NCES, 2015). Second, many public institutions have been implementing distance education programs to increase their revenue because of a decrease in state funding of higher education (Kranch, 2008; Minaar, 2013; Maguire, 2005; Tabata & Johnsrud, 2008). The increase in distance education programs has led many institutions to create policies to delineate ownership of faculty-created intellectual property (Blanchard, 2010; Kelley, Bonner, McMichael, & Pomea, 2002; Lape, 1992). Hence, the number of public institutions with policies to delineate ownership of online course materials has grown.

The third reason this study focuses on public higher education institutions is because there is an additional layer of complexity regarding copyright ownership when it comes to public higher education institutions. The reason for the added layer of complexity is because public institutions are provided sovereign immunity in federal court based on the Eleventh Amendment
of the Constitution. However, there is some question as to whether the Copyright Act has abrogated this immunity, thus potentially allowing a suit to be brought against a public institution based on the tenets of copyright. Moreover, some scholars argue that public higher education institutions may be violating their faculty’s right to due process under the Fourteenth Amendment, or that these institutions may be violating the Fifth Amendment’s Takings Clause by claiming ownership of faculty intellectual property without adequate compensation (Klein, 2005; Latourette, 2006; Todd, 2007).

In summary, the population for the study will consist of public higher education institutions because of the increase in the number of public higher education institutions offering distance education, which has led to an increase in intellectual property policies at these institutions. Furthermore, another reason for focusing on public higher education institutions is because most students taking distance education do so through a public higher education institution. As of Fall 2015, 68% of all students enrolled in at least one distance education course at a higher education institution did so at a public institution (NCES, 2015). Therefore, it is important to examine the policies that public higher education institutions have put in place to provide the structure for their distance education programs. A third consideration that led to the selection of the population for this study was the fact that public institutions enjoy immunity from prosecution in federal courts, unless this immunity has been abrogated by federal law or if another constitutional amendment, such as the Fifth or Fourteenth Amendments, have been violated.

**Definition of Terms**

For purposes of this study, the following working definitions are used:
Carnegie Classification. “The Carnegie Classification has been the leading framework for recognizing and describing institutional diversity in U.S. higher education for the past four and a half decades. Starting in 1970, the Carnegie Commission on Higher Education developed a classification of colleges and universities to support its program of research and policy analysis. Derived from empirical data on colleges and universities, the Carnegie Classification was originally published in 1973, and subsequently updated in 1976, 1987, 1994, 2000, 2005, 2010, and 2015 to reflect changes among colleges and universities. This framework has been widely used in the study of higher education, both as a way to represent and control for institutional differences, and also in the design of research studies to ensure adequate representation of sampled institutions, students, or faculty” (The Carnegie Classification of Institutions of Higher Education, n.d.).

Copyright. “A form of protection provided by the laws of the United States for "original works of authorship", including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations. "Copyright" literally means the right to copy but has come to mean that body of exclusive rights granted by law to copyright owners for protection of their work” (U.S. Copyright Office, n.d., para. 6).

Distance Education. “A method of instruction in which students and teachers are separated by time and/or place” (Peters, 1999, p. ii).

Document Analysis. A research design method “that employs both qualitative and quantitative approaches to study empirical documentation with the purpose of grouping similar cases or data according to certain concepts and schemes and then to organize and interpret the data systematically” (Bozkurt et al., 2015, para. 11).
**Fair Use.** “A reasonable and limited use of a copyrighted work without the author’s permission” (Garner, 2009, p.676).

**Intellectual Property.** “A commercially valuable product of the human intellect, in a concrete or abstract form, such as a copyrightable work, a protectable trademark, a patentable invention, or a trade secret” (Garner, 2009, p. 881).

**Online Education.** “A form of distance education that uses computers and the Internet as the delivery mechanism, with at least 80% of the course content delivered online” (Kentnor, 2015, p. 28).

**Work Product.** “In an employment setting, the term “work product” refers to anything created by an employee that becomes property of the employer under certain conditions” (Work Product Disputes, n.d., para. 1).

**Organization of Study**

This study is organized into five chapters. Chapter 1 provides an introduction to the study, outlines the need for the study, provides a statement of the problem under consideration, the significance of the study and how the results might inform the development of intellectual property policies in the future, the research question, the scope of the study and discusses why the population was determined, and a section containing the definitions of terms used throughout the paper. Chapter 2 presents an examination of the literature regarding the growth and development of distance education, the Copyright Law and the development of the teacher exception to the law, an examination of the policy issues related to ownership of faculty-created material, and an analysis of prior studies of Intellectual Property Policies in higher education institutions. Chapter 3 describes the methodology for the study, which will entail a document analysis of public higher education institutions that provide distance education, to identify the
components of their intellectual property policies and how these policies vary within higher education institutions. This chapter also includes information about the proposed data analysis, study limitations, researcher bias, and the selection of participants for the study sample.

Chapter 4 presents the results of the document analysis performed on the publicly available policies that delineate ownership of faculty work product at public higher education institutions. The chapter provides a description of the sample studied, an overview of the policy retrieval process, and a discussion of the analysis procedure. This chapter also discusses the analysis for each of the identified categories of the study, including an examination of the findings when they are disaggregated by sector (2-year and 4-year institutions). The chapter ends with a summary of the findings of the study. Chapter 5 provides an overview of the first four chapters, a presentation of the research findings, and a discussion of those findings. This chapter also includes a discussion of policy recommendations, and recommendations for future research. Finally, chapter 5 closes with a summary of what was learned.
Chapter 2: Literature Review

This chapter begins with an overview of the evolution of distance education from its beginning with correspondence courses, through the implementation of radio and television broadcasts for education, ending with the development of the Internet and online course delivery (see Figure 1 below). This overview includes the development and expansion of each method of distance education delivery and a discussion of the problems that educational institutions encountered when trying to implement each of these forms of distance education. Next is a discussion of the U.S. Copyright Law and its development (see Figure 1 below), including changes that affected ownership of copyrightable material and use of copyright-protected material in higher education institutions. The following section outlines the creation of the teacher exception to the U.S. Copyright Law, and examines some of the issues surrounding the teacher exception. Following that is an overview of the conflicting recommendations by various educational organizations and the concerns that faculty have because of the ambiguity surrounding the ownership question. Next is an examination of past research on institutional policies that cover ownership of intellectual property. Finally, there is a summary of what was learned from the literature review.

Evolution of Distance Education

Throughout its many incarnations, distance education has been viewed as a channel through which education could be made available to those without access to higher education resources because of financial or physical constraints (Amirault, 2012; Berge, 1998; Kranch, 2008; Minaar, 2013; Smith, 2016). At its inception, distance education was delivered through correspondence study. Since then, advances in technology have expanded the means through which distance education is delivered, so that today distance education encompasses education
delivered through correspondence, audio technology, video technology, and the Internet. As these technological innovations were employed to deliver distance education, each one encountered problems that hindered its initial implementation (Caruth & Caruth, 2013; Keeler, 2016; Longstaff, 2014; McPherson & Bacow, 2015). Although distance education has been commonplace since the late 1800s, its most rapid growth began in the 1990s when the Internet became readily available to everyone with the resources to access it (Casey, 2008; Dahindon, 2010; Kentnor, 2015; Smith, 2016). This section details the evolution of distance education as technology has advanced, including an examination of the barriers encountered as these technological innovations were utilized for educational purposes.

Figure 1. Evolution of distance education, technology, and the United States Copyright Law.
**Correspondence study.** Distance education was the result of a revolutionary innovation; the postal service. The earliest known reference to instruction offered through mail was an advertisement in the *Boston Gazette* in 1728 offering shorthand lessons; followed in 1833 by a similar offering in the Swedish newspaper *Lunds Weckoblad* offering a course in composition through the mail (Holmberg, 1995; Smith, 2016; Verduin, Jr. & Clark, 1991). However, there is no evidence that these early courses provided feedback to the learner, which indicates that they should not be formally recognized as distance education courses (Kentnor, 2015; Verduin, Jr. & Clark, 1991). In 1840, Isaac Pitman pioneered distance education when he began offering shorthand courses through the mail in Bath, England that were the first to provide feedback to students and assess their learning (Caruth & Caruth, 2013; Casey, 2008; Kiryakova, 2009; Smith, 2016; Sumner, 2000). The Phonographic Correspondence Society, founded in 1843, corrected the shorthand exercises of Pitman’s students and later became Sir Isaac Pitman’s Correspondence Colleges (Holmberg, 1995; Schlosser & Simonson, 2006).

England continued to lead the way in distance education by establishing the University of London’s International Programmes in 1858, which provided the opportunity for students from around the world to earn a higher education degree through correspondence courses (McPherson & Bacow, 2015; University of London, 2017). In the early 1870s, the University of Cambridge began offering extension services in the form of traveling lectures, which eventually grew to include correspondence studies and led to the establishment of the University Correspondence College in 1887 (Holmberg, 1995; Schlosser & Simonson, 2006; Sherow & Wedemeyer, 1990; Verduin, Jr. & Clark, 1991). Throughout the late 1800s, universities and private entities in England continued to establish correspondence colleges, so that correspondence education in England eventually became widespread (Sherow & Wedemeyer, 1990). Some of these colleges
were created to provide exam preparation, such as Skerry’s College in Edinburgh, established in 1878, but others provided courses in other subjects (Holmberg, 1995; Verduin, Jr. & Clark, 1991).

Meanwhile, the United States was a little slower to embrace this new educational delivery method, but eventually correspondence studies were offered in the U.S. In 1873, Anna Eliot Ticknor founded the Society to Encourage Studies at Home in Boston, Massachusetts, which provided a liberal education to women, but did not offer college credit (Caruth & Caruth, 2013; Casey, 2008; Harting & Erthal, 2005; Larreamendy-Joerns & Leinhardt, 2006). Ticknor was inspired to create her Society after learning about the English Society for the Encouragement of Home Study (Sherow & Wedemeyer, 1990). Less than a year later, Illinois Wesleyan University became the first higher education institution in the U.S. to offer degree programs through correspondence (Harting & Erthal, 2005; Kentnor, 2015; Smith, 2016). The correspondence program at Illinois Wesleyan was modeled on similar programs at Oxford, Cambridge, and London University in England (Schlosser & Simonson, 2006).

Although correspondence education was already widely accepted in England and had influenced the creation of similar programs in the United States, it was the Chautauqua Movement that led to widespread acceptance of correspondence education in the U.S. (Kentnor, 2015; Smith, 2016). Originating in 1874, the movement began when Lewis Miller and John Heyl Vincent began offering a training program for Sunday school teachers that met during the summer and continued throughout the year through correspondence (Kentnor, 2015; Sherow & Wedemeyer, 1990). Eventually, the program expanded to include general education and the arts, and provided certificates to participants who completed the program requirements (Kentnor, 2015; Scott, 1999). As the Chautauqua Movement gained popularity, it became more structured.
The Chautauqua Literary and Scientific Circle (CLSC) was established in 1878 by John Heyl Vincent and its popularity grew rapidly (Scott, 1999; Sherow & Wedemeyer, 1990). One of the reasons the CLSC was so popular was because of the establishment of reading circles, where students throughout the world would meet locally to discuss the lessons they were working on (Davis, 1983). To help facilitate the work of the local circles, *The Chautauquan* was created. *The Chautauquan* was a monthly magazine that provided required CLSC lessons, study guides, and news from various local circles, but was later reformatted as a literary magazine (Davis, 1983; Scott, 1999). Because of the growing demand for education through the CLSC, John Heyl Vincent established Chautauqua University in 1883 (Casey, 2008; Harting & Erthal, 2005; Scott, 1999).

William Rainey Harper began his career at Chautauqua University in 1883 as a Hebrew instructor (Sherow & Wedemeyer, 1990). Through his efforts, Chautauqua began offering a correspondence study degree program in 1885 that was developed by Harper (Sherow & Wedemeyer; Verduin, Jr. & Clark, 1991). In 1891, Harper, who is credited with being the founder of modern correspondence education, became the first president of the newly established University of Chicago (Harting & Erthal, 2005; Larreamendy-Joerns & Leinhardt, 2006). As president, Harper created the Department of Home-Study in 1892, through which the University of Chicago offered correspondence courses based on the Chautauqua Model (Kentnor, 2015; Larreamendy-Joerns & Leinhardt, 2006; Sherow & Wedemeyer, 1990; Verduin, Jr. & Clark, 1991). Through the Home-Study program, students were able to complete up to one-third of their bachelor’s degree requirements (Larreamendy-Joerns & Leinhardt, 2006).

As acceptance of correspondence education grew, a number of public and private entities began offering courses. In 1891, Thomas J. Foster, who was editor of the *Mining Herald*, a local
newspaper in the coal mining district of Pennsylvania, began offering correspondence in mining methods and mining safety (Holmberg, 1995). As demand increased, he added additional course offerings, leading to the creation of International Correspondence Schools of Scranton, Pennsylvania (Holmberg, 1995; Verduin, Jr. & Clark, 1991). The University of Wisconsin began offering correspondence courses in 1891 (Sherow & Wedemeyer, 1990). Initially, faculty and administrators alike were excited about these offerings, but their efforts failed because of waning faculty enthusiasm and lack of financial and administrative support, leading the university to cease offering correspondence courses by 1899 (Allen & Wedemeyer, 1957; Schlosser & Simonson, 2006; Sherow & Wedemeyer, 1990). However, Charles Van Hise, who was appointed as the president of the university in 1903, spearheaded an effort to reinstate correspondence education, citing the number of Wisconsin residents who were paying to learn through correspondence from out-of-state correspondence schools as one of the primary reasons for why the university should provide this service (Allen & Wedemeyer, 1957). His efforts were successful and, in 1906, the University of Wisconsin-Extension was formed (Allen & Wedemeyer, 1957; Verduin, Jr. & Clark, 1991). Van Hise recognized the need for strong leadership in the development of the correspondence program and appointed William Lighty as the Director of Correspondence Instruction (Allen & Wedemeyer, 1957; Sherow & Wedemeyer, 1990). Lighty would go on to play an important role in creating acceptance for the academic potential of distance education (Sherow & Wedemeyer, 1990).

By the 1920s, increased demand for college degrees and increased barriers to traditional education led to an increase in demand for distance education (Caruth & Caruth, 2013; Kentnor, 2015; Smith, 2016). The demand was so great that at one point there were four times as many students enrolled in correspondence courses than there were in traditional higher education
courses (Caruth & Caruth, 2013). The growth in demand for distance education also brought issues and criticisms. One issue that occurred was the proliferation in for-profit schools that provided low-quality education. These schools were considered to be diploma mills (Sumner, 2000). At the same time, more reputable schools were also plagued with criticism that correspondence study did not provide the same quality of education as more traditional classroom experiences (Kentnor, 2015; Larreamendy-Joerns & Leinhardt, 2006; Smith, 2016). Although correspondence study did allow for personalized instruction, critics argued that the lack of interaction between students and their teachers and between students and other students made this method of educational delivery less effective than traditional classroom instruction (Kiryakova, 2009; Larreamendy-Joerns & Leinhardt, 2006). In addition to quality concerns, institutions also encountered structural difficulties. One of the more urgent of these was “the absence of organizational infrastructure to sustain the initiatives as they scaled up”, which was possibly exacerbated by the lack of financial support for distance programs (Larreamendy-Joerns & Leinhardt, 2006, p. 576). Moreover, there were concerns from teachers about the additional time required to teach correspondence courses and the lack of financial incentives to cover the extra workload (Allen & Wedemeyer, 1957; Larreamendy-Joerns & Leinhardt, 2006).

On the other hand, proponents of distance education asserted that correspondence study allowed students to work at their own pace, provided greater access to higher education, facilitated personalized instruction, and allowed students to work at a time and place convenient to them (Caruth & Caruth, 2013; Kiryakova, 2009). Furthermore, Allen and Wedemeyer (1957) claimed that the learning outcomes for correspondence study were at least as good as, if not better than, the learning outcomes of traditional classes. In an effort to address concerns about the quality of education provided through correspondence study, William Lighty, Director of
Correspondence Instruction at the University of Wisconsin, founded the National University Extension Association (NUEA) in 1915, which served as an accrediting body for distance programs and created standards for the delivery of correspondence education (Kentnor, 2015; Sherow & Wedemeyer, 1990; Smith, 2016; Verduin, Jr. & Clark, 1991).

**Educational radio.** Invented in 1894, radio was the next innovation employed to deliver distance education (Kentnor, 2015). The arrival of radio brought with it a sense of excitement about the unlimited possibilities for providing increased access to education (Keeler, 2016; McPherson & Bacow, 2015). Professors at the University of Wisconsin – Extension began an amateur radio station in 1919 that later became station WHA, which was the first federally licensed educational radio station (Kentnor, 2015; Sherow & Wedemeyer, 1990; Smith, 2016). By 1921, there were three universities with educational radio licenses, the University of Salt Lake City, the University of Wisconsin, and the University of Minnesota (Casey, 2008). In 1922, seventy-three additional educational institutions received broadcast licenses, but only half of them were actually broadcasting over the air (Kentnor, 2015). By 1923, educational institutions owned more than 10 percent of radio stations, and by 1925 there were 128 educational radio stations in the U.S. (Casey, 2008; McPherson & Bacow, 2015). By the end of the 1920s, there were a total of 176 educational institutions with radio licenses (Kentnor, 2015). However, the educational radio boom would not last as institutions faced regulatory issues impacting their ability to procure licensing and economic turmoil brought on by the start of the Great Depression in 1929 (Kentnor, 2015; McPherson & Bacow, 2015). Because of the financial and regulatory issues, by 1931 there were only forty-nine educational radio stations remaining in the U.S. (McPherson & Bacow, 2015).
At its onset, there were no regulations to govern radio broadcasts, but this changed with the implementation of the Radio Act of 1912. The Act required licensing for all stations that transmitted radio broadcasts, which were then classified according to their broadcast purpose and assigned a radio frequency by the Secretary of Commerce based on their classification (N. C. B., 1930; Tillinghast, 2006). However, by 1922 the demand for licenses was quickly outpacing the limited number of available frequencies, leading the Secretary of Commerce, Herbert Hoover, to begin denying license requests (Kentnor, 2015; N. C. B., 1930). This led to a court battle that was resolved in 1923 when a federal appeals court ruled that under the Radio Act of 1912 anyone who applied for a license must be given one (Kentor, 2015; N. C. B., 1930; Tillinghast, 2006). As a result, the number of radio stations increased dramatically, which increased the interference on the stations as they were broadcasting over each other and decreased the quality of the broadcasts for listeners (Kentnor, 2015; Tillinghast, 2006). Subsequently, in an effort to reduce the number of radio stations, Congress passed the Radio Act of 1927, which provided regulations for all radio stations and took the licensing power away from the Secretary of Commerce and placed this power in the hands of an independent agency, the Federal Radio Commission, which was later replaced by the Federal Communications Commission (Davis, 2016; Kentnor, 2015; N. C. B., 1930; Tillinghast, 2006).

Educational radio courses were faced with criticism, many of which were echoes of earlier concerns about correspondence study, including concerns about the quality of education delivered using the radio format; the lack of interaction between the teacher and the student and between students; and an increase in teacher workload (Keeler, 2016; Saba, 2011). Other concerns included time constraints because radio programs were only broadcast at certain times and were difficult to match with class schedules; the difficulty in keeping a student’s attention
using this delivery method; and complaints that the content of educational radio broadcasts were not based on the curriculum they were supposed to be covering (Keeler, 2016; Saba, 2011). Another important concern for many institutions was the cost of implementing radio technology, which was quite expensive (Keeler, 2016). However, once the technology was employed, the cost to actually broadcast radio programming was relatively inexpensive (Kiryakova, 2009; Thomas, 2001). Despite the relatively low cost associated with radio broadcasting, over time institutions that were creating and broadcasting educational programs discovered that the tuition collected for educational radio courses was not enough to support the cost of providing these programs (Keeler, 2016).

Although faced with regulatory and financial issues, educational radio persisted. According to Sherow & Wedemeyer (1990) there were approximately 20 educational radio stations in operation throughout the 1930s and 1940s, many of which were connected to state universities. Scholars of that era believed that radio had the potential to uplift people culturally and bring them together, educate them, and provide an economical means through which to deliver education (Keeler, 2016). Originally, educators combined radio technology with either correspondence study or classroom study in order to provide a better learning experience for students (Harting & Erthal, 2005; Keeler, 2016; Kiryakova, 2009). When audio tapes became available, it expanded the learning potential for students as they were then able to control their learning experience by rewinding and pausing the program when they needed to and they were also able to listen to the material at a time convenient to them (Thomas, 2001).

In an effort to address concerns about the quality of radio education, William Lighty, Director of Correspondence Instruction at the University of Wisconsin, used his influence to help create the Association of College and University Broadcasting Stations in 1925, later changed to
the National Association of Educational Broadcasters (NAEB) in 1934, which was successful in influencing the Federal Communications Commission’s decision to reserve 25 FM channels for educational radio broadcasting (Sherow & Wedemeyer, 1990; University of Wisconsin, n.d.). By 1956, most educational radio stations were members of the NAEB, which provided access to a network of taped radio programs and special educational programs that were commissioned by the NAEB (Sherow & Wedemeyer, 1990). Throughout the year 1930 several other organizations were created to serve various purposes in helping educational radio to succeed. The National Advisory Council for Radio was established to promote radio broadcasting as a teaching medium; the Institute for Education by Radio was founded and focused on techniques used in educational broadcasting; and the National Committee on Education by Radio was created to “protect the rights of educational broadcasting, coordinate research on educational broadcasting, house research reports, and assist educational institutions with licensing and technical procedure” (Kentnor, 2015, p. 25).

**Educational Television.** Despite its arrival in the late 1800s, television was not available to the public until 1927 (Kentnor, 2015). The University of Iowa began testing this new technology in 1932, and started experimentally broadcasting courses in 1934 (Casey, 2008; Harting & Erthal, 2005; Smith, 2016). Later, Iowa State University received a license for educational television in 1945 and began educational broadcasts in 1950 (Saba, 2011). Similar to what happened with radio broadcasting, regulations were created to try to handle the demand for the limited number of channels available, which resulted in a freeze in 1948 on licensing for television broadcasts (Birmingham, Jr., 1970; Kentnor, 2015). However, despite the licensing freeze, throughout the 1950s and 1960s there were positive signs that educational television would thrive. In 1952, in response to NAEB and other educational organization’s requests to
reserve television channels to be used exclusively for educational purposes, the Federal Communications Commission (FCC) initially reserved 242 channels; by 1966 there were 632 channels earmarked for educational broadcasts, with one-third of these licensed to colleges and universities (Birmingham, Jr., 1970; Kentnor, 2015; Sherow & Wedemeyer, 1990; University of Wisconsin, n.d.). Furthermore, legislators in 1958 passed the National Defense Education Act, which provided funding for research and experimentation with instructional television programs (Birmingham, Jr., 1970; Davis, 2016). In addition, the FCC created the Instructional Television Fixed Service (ITFS) in 1963, which was a low-cost, subscriber-based service that provided 20 television channels for educational institutions to use for delivering educational broadcasts (Birmingham, Jr., 1970; Casey, 2008). That same year, the California State University System was the first to apply for an ITFS license (Casey, 2008).

In 1969, the UK founded the Open University, which used a variety of multimedia to deliver distance education, including correspondence, radio, television, audio cassettes, and video cassettes and provided the model for distance education that many other institutions would follow (Casey, 2008; Harting & Erthal, 2005; Longstaff, 2014; Sumner, 2000). The first degree program that was delivered wholly at a distance in the U.S. was developed at the University of New York in 1970. Throughout the early 1970s, colleges and universities continued to develop televised courses and closed-circuit television was used to deliver content to both on-campus and off-campus students (Casey, 2008; Harting & Erthal, 2005; Smith, 2016). As interest in educational television increased, so did the number of educational television stations; by 1972 there were a total of 233 stations (Harting & Erthal, 2005).

However, educational television was criticized for the low-quality of the instructional programming, which frequently consisted of a teacher reading their notes (Harting & Erthal,
Because of the poor production quality, viewership of these programs waned, which led to a decrease in funding for educational television (Harting & Erthal, 2005; Kentnor, 2015; Smith, 2016). In addition, critics pointed out that educational television did not provide interaction between the student and the teacher and it was expensive to implement (Casey, 2008; Kiryakova, 2009). Moreover, there were problems associated with over-saturation of licenses in highly populated areas that caused issues with the quality of broadcast reception (Birmingham, Jr., 1970). On the other hand, proponents of educational television pointed out that television had the capability of reaching large numbers of potential students and they claimed that education provided through televised media was as good as traditional instruction (Birmingham, Jr., 1970; McPherson & Bacow, 2015). Additionally, television allowed for the transmittal of more complex and abstract ideas than audio technologies were capable of conveying (Thomas, 2001). When video tapes became available, they provided students with more control over their learning because students were able to watch at their own convenience, and they could rewind, pause, and watch material multiple times (McPherson & Bacow, 2015; Thomas, 2001). Despite the development of audio and video technologies that had the potential to revolutionize distance education, by the end of the 1980s most distance education was still being delivered through correspondence courses (Sumner, 2000).

**Online education.** The precursor to the Internet as we know it today was the ARPA-Net (Advanced Research Projects Agency-Net). Created in 1969, the ARPA-Net linked four nodes (computers) at four academic institutions to facilitate the sharing of these expensive resources (Dahinden, 2010; Winward, 2013). By 1972, the ARPA-Net had grown to include twenty-three nodes, including nodes in England and Norway (Winward, 2013). The military became interested in the ARPA-Net because of the secure manner in which data was transmitted between
nodes (Dahinden, 2010). However, scientists created open protocols for data transmission in a bid to encourage more sharing of knowledge, which led to the division of the ARPA-Net into two networks, one for civilian use and one for military use (Dahinden, 2010). With the creation of the microprocessor by the Intel corporation in 1971, computers started to become more accessible, leading to experimentation with computers as a potential method for educational delivery in the late 1970s and early 1980s (Casey, 2008; Harting & Erthal, 2005). Unfortunately, the low quality of software available at that time hindered the adoption of computers for educational purposes, although some corporations were using computers as tools to train employees during the 1980s (Harting & Erthal, 2005; Kentnor, 2015). However, it was not until the University of Phoenix first began offering courses online that the potential of online learning was demonstrated.

Beginning in 1989, the University of Phoenix offered online education through CompuServe, which was one of the first online access services for the general public (Casey, 2008; Harting & Erthal, 2005; Kentnor, 2015). Services such as CompuServe provided dial-up access through telephone lines, but came with a steep price. For example, in 1991 CompuServe charged a $2 monthly fee and $12.50 per hour for access, and it required users to have some skill with its software (Duffus, 1991). Other services available in 1991, such as Prodigy and America Online, were a little less expensive and easier to use (Duffus, 1991). For students taking an online course at that time, the added cost of online access may have greatly impacted their ability to afford higher education delivered in this manner, which may have made some higher education institutions hesitant to offer courses through this medium. However, the online landscape was about to change with the creation of the World Wide Web (WWW).
In 1989, the WWW was created and it became available to the public in 1991 (Casey, 2008; Dahinden, 2010). The University of Phoenix was one of the first institutions to provide online courses through the WWW, which provided an environment that supported the integration of multiple types of media, including pictures, sound, video, text, and animation (Dahinden, 2010; Smith, 2016). However, educators were still wary of this new type of educational delivery and it was not immediately adopted by public higher education institutions (Harting & Erthal, 2005; Kentnor, 2015). Over time, improvements came along that spurred the rapid growth of Internet usage by the public; the hardware costs associated with Internet access began to decrease, the software became more user-friendly, more multimedia content was offered on the Internet, and high-speed broadband access and high-power personal computers became available (Dahinden, 2010; Harting & Erthal, 2005). Some higher education institutions began to take notice of the growth in Internet users and started to experiment with online courses in the early to mid-1990s (Kentnor, 2015). Then, several changes happened that led to a widespread increase in the number of higher education institutions offering online education. Those changes included Internet access for universities provided by the National Science Foundation, the creation of online course management systems, and improvements in the software that supported audio content, video content, and web-conferencing (Casey, 2008; Harting & Erthal, 2005; Saba, 2011).

The rapid growth in the number of public higher education institutions began in 1998 with the creation of New York University Online, a subsidiary of New York University, followed that same year by the creation of Western Governor’s University, which was founded by nineteen state governors in an effort to make education more accessible (Harting & Erthal, 2005; Kentnor, 2015; Smith, 2016). Towards the end of 1998, approximately 100 universities and colleges in
California came together and created the California Virtual University (Kentnor, 2015). Tabata and Johnsrud (2008) report that the number of two- and four-year colleges that offered distance education increased from 47,500 during the 1997-1998 school year to 118,110 during the 2000-2001 school year. They also report a corresponding growth in the number of students who took distance education courses from 1.3 million during 1997-1998 to 2.9 million in 2000-2001. Since then, some higher education institutions have expanded their online offerings from individual courses to degree programs (Radford, 2011). In 2008, the idea of Massive Open Online Courses (MOOCs) was introduced, but did not garner much interest from higher education institutions initially (Longstaff, 2014). In 2012, interest in MOOCs grew when Coursera, EdX, and Udacity began to offer free courses that were available worldwide (Kerrison, Son, Tutty, & Grainger, 2016; McPherson & Bacow, 2015). Since then, higher education institutions throughout the world have established MOOCs individually or through partnerships with other higher education institutions (Kerrison et al., 2016). Proponents of MOOCs claim that MOOCs expand access to education on a global scale, although critics believe that it actually creates more separation by providing free education to all, but only giving college credit to those who are able to pay for it (Longstaff, 2014). In the United States, MOOCs are only a small component of online course offerings (McPherson & Bacow, 2015). Allen and Seaman (2015) report that the number of higher education institutions offering a MOOC has increased from 2.6% in 2012 to 11.3% in 2015. Moreover, there has been a corresponding decrease in the number of institutions planning to create a MOOC from 9.4% in 2012 to 2.3% in 2015 (Allen & Seaman, 2015).

Despite the initial growth in online course offerings, not all attempts at establishing an online program were successful for a variety of reasons. As with all forms of distance education,
critics of online education have expressed concerns about the quality of education delivered in this format as compared to learning in a traditional format, although studies have shown that there is no statistically significant difference in the outcomes between online and traditional courses (Casey, 2008). In addition, many faculty have expressed concern about the increased workload and the lack of institutional support associated with creating and implementing online courses (East, LaMendola, & Alter, 2014; Kentnor, 2015; Mitchell, 2009). On the other hand, supporters of online education promote it as a way to provide higher education globally, and claim that it allows for interactive multimedia content that can provide a more dynamic learning environment for students, provides communication channels between the student and teacher and between students, allows students to access additional resources through search features of the WWW, and works across multiple platforms (Dahinden, 2010; Kiryakova, 2009; Smith, 2016; Thomas, 2001). In addition, online education provides greater access to higher education and it allows students to work in a time and place convenient to them (Amiel & Orey, 2006; Berge, 1998; Moloney & Oakley II, 2010). Of additional concern to higher education institutions are the organizational issues they experience when trying to implement online programs. For example, many public higher education institutions faced faculty resistance as they tried to implement online programs, which had a negative impact on the sustainability of those programs (East, et al., 2014; Keast, 1997; Kentnor, 2015; Nworie, 2012). Moreover, some of these online programs failed because of nonsystematic, sporadic implementation or flawed planning (Keast, 1997; Moore, 2006; Piña, 2008). In addition, concerns about student retention rates in online courses hampered the initial adoption of online education at some higher education institutions, as did the initial cost of implementation, which can be quite significant (Allen & Seaman, 2013; Kiryakova, 2009).
Despite the issues associated with implementing an online program, the number of higher education institutions with an online component have continued to increase to keep pace with the demand for access to higher education (Amirault, 2012; Longstaff, 2014; Nworie, 2012; Poulin & Straut, 2016). By 2001, 90% of public two- and four-year institutions were offering distance education courses, which is a much higher percentage than higher education institutions overall at that time (Shea, 2007). The reported rate of all two- and four-year institutions offering distance education in 2001 was 56%, with 90% of these offering their courses in an online format (Shea, 2007). As of Fall 2007, the number of public and private two- and four-year institutions offering distance education had grown to 81.42% (NCES, 2009). Of these, 78% offered online courses and 38% offered distance education through other means, including correspondence, audio, video, or some combination of these technologies (NCES, 2009). Today, public institutions continue to provide the majority of distance education offerings to students. As of Fall 2015, 68% of all students enrolled in at least one distance education course at a higher education institution did so at a public institution (NCES, 2015). Furthermore, the demand for online education is now outpacing the growth of higher education as a whole (Allen & Seaman, 2015; Ortagus & Stedrak, 2013; Poulin & Straut, 2016). Interestingly, even as demand for online education grows, private for-profit institutions are experiencing a decrease in demand for their online offerings (Allen & Seaman, 2015).

**U. S. Copyright Law**

Traditionally, higher education institutions did not take an interest in owning faculty-created works because the scholarly pursuits of faculty were not viewed as having monetary value (Denicola, 2006; Kim, 2006; Strauss, 2011). However, in recent times many institutions have seen their budgets shrink due to reduced funding and have sought out alternate sources of
revenue (Lape, 1992; Strauss, 2011). One very lucrative way in which higher education institutions have augmented their budgets is through the implementation of distance education programs (Kim, 2006; Sandler, 2001; Strauss, 2011; Townsend, 2003). Consequently, many institutions have implemented policies claiming ownership of faculty-created works and are inducing their faculty to develop online courses (Blanchard, 2010; Gertz, 2013; Kim, 2006; Packard, 2002; Wadley & Brown, 1998). However, there is debate amongst scholars as to whether faculty should rightfully own the copyright to their work based on a long-standing “teacher exception” to the copyright law (Aaron & Roche, 2015; Centivany, 2011; Gertz, 2013; Klein & Blanchard, 2011; Strauss, 2011; Townsend, 2003). This section discusses the origins of copyright in the United States, changes to copyright ownership under the 1976 Copyright Act, and changes to copyright use with the inclusion of the Fair Use doctrine in the 1976 Copyright Act.

**Origins of copyright in the United States.** The law of copyright originated in England during the Middle Ages with the purpose of encouraging creativity for the benefit of the public (Wadley & Brown, 1998). The Statute of Anne, enacted in 1710, was the world’s first copyright law, and provided copyright protection to the author of a printed work for 14 years (Intellectual Property Rights Office, 2006; NEN, 2011). In the United States, copyright protection was implemented by the First Congress of the United States in 1790 and was based on England’s model of copyright as a property concept (Gertz, 2013; Holmes & Levin, 2000; Laughlin, 2000; Loggie, Barron, Gulitz, Hohlfeld, Kromrey, & Sweeney, 2007; NEN, 2011; Packard, 2002). The United States Constitution grants 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” (U.S. Const., art. I, § 8, cl. 8). In keeping with the purpose
of copyright as laid out in the Constitution, the Copyright Act of 1790 provided copyright protection for maps, charts, and books for fourteen years, with the option to renew the copyright for an additional fourteen years (Gertz, 2013). Since its initial implementation, the Copyright Act has been revised a number of times, with the first major revision occurring in 1909 (Holmes & Levin, 2000; Loggie et al., 2007; Packard, 2002).

The Copyright Act of 1790 did not include any provisions for ownership of employee-created works (Gertz, 2013). However, prior to the Copyright Act of 1909, there had been some court cases that allowed employers to own the copyright to works made for hire (Gertz, 2013; Lape, 1992). Although the Copyright Act of 1909 provided ownership of the copyright for a work to the original author, it also included a clause that codified the prior case law by providing employers with copyright ownership for works made for hire (Blanchard, 2010; Gertz, 2013; Lape, 1992; Laughlin, 2000; Loggie et al., 2007; Packard, 2002; Triggs, 2005; Wadley & Brown, 1998). According to Blanchard (2010), the 1909 Act “alluded only vaguely to the notion that employers may have copyright claims to employee works, as the only reference in the Act stipulated that “the word ‘author’ shall include an employer in the case of works made for hire’ ” (p. 62). However, the terms “employer” and “works for hire” were not defined in the Copyright Act of 1909 (Blanchard, 2010; Gertz, 2013; Kranch, 2008; Lape, 1992; Loggie et al., 2007; Wadley & Brown, 1998).

Changes to copyright ownership under the Copyright Act of 1976. In applying the work-for-hire doctrine under the Copyright Act of 1909, courts varied in their approach. Lape (1992) indicates that some courts looked to whether a work subject to copyright was done in the ‘scope’ or ‘course’ of employment, while others considered if there was an agreement between the employee and employer. However, courts were divided on whether the agreement must be an
explicit written agreement, or if an implied agreement would suffice (Lape, 1992). As with the 1909 Act, Congress codified the existing case law when crafting the 1976 changes to the copyright law (Lape, 1992; Strauss, 2011; Wadley & Brown, 1998). Furthermore, Congress settled the question of whether evidence of an agreement should be implicit or explicit by indicating through the wording of the 1976 Act that an explicit written agreement would be required.

The 1976 amendments to the Copyright Act included substantial changes (Holmes & Levin, 2000; Packard, 2002). Section 102 of the 1976 Act indicates that copyright protections are afforded to any creation in fixed tangible form from the moment it is created (Copyright Act of 1976, 2011). This was a change from the 1909 Act, which only granted federal protection for published works with a copyright notification affixed; unpublished works were protected under state laws (Blanchard, 2010). In addition, Section 102 of the 1976 Act describes the types of works protected by copyright. These include: “(1) literary works; (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works” (Copyright Act of 1976, 2011). The intention of the Copyright Act is to stimulate creativity by allowing the creators to benefit from their work, but the rights conferred by the Copyright Act are defined for a limited time (Seymore, 2006). Currently, individuals retain copyright protection over the life of the author plus 70 years and works made for hire are covered for either 95 years after first publication or 120 years after creation of the work, whichever is shorter (Gertz, 2013; Klein & Blanchard, 2011; Nelson, Barnett, Gorman, Reichman, Zurbriggan, & Nisenson, 2014; Sprigman, 2004; Townsend, 2003). This was a substantial change from the
1909 Act, which only afforded protection for 28 years, with the option to renew the copyright for an additional 28 years (Gertz, 2013).

In its current iteration, the Copyright Act does not require the owner of a creative work to register the work; the creation of the copyright is automatic (Aaron & Roche, 2015; Klein & Blanchard, 2011; Nelson et al., 2014; Packard, 2002; Sprigman, 2004; Twigg, 2000). However, registering a creative work with the Copyright Office provides additional protections in the case of copyright infringement against the copyright owner, including the right to bring suit and collect damages (Aaron & Roche, 2015; Loggie et al., 2007; Sprigman, 2004; Townsend, 2003; Twigg, 2000). As stated earlier, under the 1909 Act federal protection of copyrighted work was provided for those who registered their work, while state laws protected unpublished works (Blanchard, 2010). The 1976 Act changed that by preempting the relevant state common law so that now only the federal copyright law applies in cases of infringement (Blanchard, 2010; Holmes & Levin, 2000; Strauss, 2011). In addition, copyright provides owners with control over their creative works, including the right to reproduce the work; create derivatives of the work; distribute the work, including sale, rent, or lease of the work; display or perform the work publicly; and the right to transfer ownership of the work (Aaron & Roche, 2015; Klein & Blanchard, 2011; Loggie et al., 2007; Townsend, 2003; Twigg, 2000; Wadley & Brown, 1998).

The 1976 Act describes the owners of a copyrighted work as either the author, joint authors, contributors to collective works, or employers if the work is a work made for hire (Kelley, Bonner, McMichael, & Pomea. 2002). One major change from the 1909 Copyright Act was the inclusion of a definition for the term “works made for hire,” which is defined by the 1976 Act as:

(1) a work prepared by an employee within the scope of his or her employment; or
(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. (Copyright Act of 1976, 2011).

However, the terms “employee”, “employer”, and “scope of employment” are not defined in the 1976 Copyright Act (Centivany, 2011; Kim, 2006; Laughlin, 2000; Packard, 2002; Sandler, 2001; Strauss, 2011). As with the Copyright Law of 1909, it has been left to the court system to determine how to define these unclear terms.

Changes related to fair use of copyrightable material. According to Rooksby (2016a), there are two major copyright issues that institutions must grapple with when implementing online education: (1) copyright ownership (who owns the copyright to faculty-created material) and (2) copyright use (whether content falls within the fair use guidelines). The second issue stems from the Fair Use doctrine included in the Copyright Act of 1976, which provides a defense against copyright infringement for materials used for educational purposes, thus establishing what some refer to as the “classroom exception” to the Copyright Law (Gasaway, 2001; Irwin, 2007). Prior to its inclusion in the 1976 Copyright Act, the idea of fair use as a defense to copyright infringement was based on existing case law that examined the authorship of a work at issue, the public benefit of the use, and the economic impact on the copyright holder (Ginsburg, 2014). According to Eakman (2015), “The fair use doctrine allows individuals to legally use material that would otherwise be copyright-protected material” (p. 641). When
deciding whether an individual’s use of copyrighted material is a fair use, there are four criteria that are examined:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

(Limitations on exclusive rights: Fair use, 2016)

However, interpretation of this law has been controversial because of the ambiguity surrounding the scope of its reach (Carter, 2007; Crews, 2003; Liu, 2016).

One of the most contested issues that arose when the Copyright Act of 1976 was being crafted was the issue of educational photocopying (Ginsburg, 2014). To address this issue, Congress brought a group of industry representatives together to discuss the issue (Rothman, 2014). The result of this endeavor was the creation of the “Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals” (“Classroom Guidelines”), which provided a minimum standard for teachers to follow when making copies for their students (Gasaway, 2001; Ginsburg, 2014; Lyons, 2010; Rooksby, 2016b; Rothman, 2014). However, very few educators were included in the creation of the Classroom Guidelines and they were highly contested by educational organizations (Bartow, 2003; Ginsburg, 2014; Keller & Vats, 2016; Rothman, 2014). Despite the fact that the Classroom Guidelines are not legally binding, subsequent court cases have demonstrated that
some courts view the Classroom Guidelines as the maximum amount of copying allowed, rather than the minimum that was intended (Irwin, 2007; Rooksby, 2016b; Rothman, 2014).

Some scholars believe that the case of *Cambridge University Press v. Becker* was a “significant recognition of educators’ rights to use copyrighted material in their teaching” (Jaszi, 2013, p. 33). In stating this belief, scholars point to the court’s recognition that the Classroom Guidelines are meant to set the minimum standards for fair use (Keller & Vats, 2016). The court in *Becker* attempted to establish a threshold for the amount of use allowed from an individual work as 10 percent or one chapter (Keller & Vats, 2016). However, on appeal (in *Cambridge University Press v. Patton*) the Eleventh Circuit rejected this threshold and directed the district court to re-evaluate each instance of potential infringement and to make their determination on a case-by-case basis, and pointed out that the nature of the work must also be examined in conjunction with the amount of the work that was used (Keller & Vats, 2016; Liu, 2016).

**The Digital Millenium Copyright Act of 1998.** Since the creation of the Fair Use doctrine in the 1976 Copyright Act, there have been additions to the Act that are meant to address issues that have arisen because of advances in technology. The first of these is the Digital Millenium Copyright Act (DMCA) of 1998, which was established to streamline efforts to fight Internet piracy while continuing to recognize fair use of copyright-protected works on the Internet (Eakman, 2015; Shuler, 2003). The Act established a safe harbor for Internet Service Providers (ISPs) hosting third-party materials and outlined the mechanisms that a copyright-holder must follow in order to have infringing material removed from the Internet (Eakman, 2015; Lipinski, 2003; Pound, 2015). However, Shuler (2003) asserts that the provisions of the DMCA “sharpened the threshold between fair and unfair use to such an extent, that many public interest groups lamented the end of any kind of fair use in a new digital environment” (p. 50).
Furthermore, the creation of the DMCA highlighted the ambiguity surrounding the Fair Use doctrine and left educators confused about the potential for copyright infringement, especially in relation to distance education (Lyons, 2010; Shuler, 2003).

**The Technology, Education, and Copyright Harmonization Act of 2002.** As distance education has grown, so has the need for clarity regarding fair use of copyrighted material in distance education classes (Carter, 2007). The Fair Use doctrine was biased towards traditional face-to-face instruction, and included specific restrictions on digital transmissions and remote locations that hampered the ability of educators to apply fair use guidelines to distance education (Crews, 2003). In an effort to level the playing field for distance education, Congress enacted the Technology, Education, and Copyright Harmonization Act (TEACH Act), which was signed into law in November of 2002 (Carter, 2007; Lipinski, 2003; Lyons, 2010; Shuler, 2003). The TEACH Act expands the rights of educators in several important ways, but it also carries with it numerous requirements that must be followed in order to benefit from its provisions (Reyman, 2006). TEACH allows educators to transmit copyrighted works to students, including those at remote locations; temporarily store copyrighted works for a brief period of time; and create digital copies of analog works if a digital copy is unavailable (Crews, 2003; Reyman, 2006).

However, the TEACH Act carries several important restrictions on the material that is allowed to be used:

- The course must be taught at an accredited, nonprofit educational institution.
- The institution must have a copyright policy in place.
- The institution must make a reasonable effort to make sure that only students registered for that class have access to the material.
- They cannot make unauthorized copies.
A notice of copyright must be attached to each item. (Carter, 2007, pp. 52-53)

Furthermore, materials used must be an integral part of the classroom learning experience, the amount used should be on par with the amount that would normally be used in a face-to-face classroom setting, the use must occur under the supervision of an instructor, and materials that are marketed for teaching and learning are exempt from the provisions of the TEACH Act (Crews, 2003; Irwin, 2007; Lipinski, 2003; Reyman, 2006).

The provisions of TEACH only apply to nonprofit, accredited educational institutions or other government organizations (Irwin, 2007; Lipinski, 2003; Lyons, 2010). An educational institution seeking to employ the provisions of the TEACH Act must follow specific guidelines, including: creating institutional copyright policies; providing information regarding copyright to faculty, staff, and students that promotes compliance with the copyright law; implementing technological measures to prevent student retention of works used beyond the class session; implementing technological measures to prevent further dissemination of the works; and the institution must not interfere with technological measures used by copyright owners to prevent retention and dissemination of the work (Colbert & Griffin, 2007, p. 502). The creation of the TEACH Act provides higher education institutions the means to provide distance education students with a classroom experience on par with that of students in face-to-face classes (Hutchinson, 2003). One important factor to note, however, is that the provisions of the Fair Use doctrine are still available to higher education institutions, which may provide more flexibility when selecting material for use in classrooms (Crews, 2003; Hutchinson, 2003).

The “Teacher Exception” to Ownership of Copyrightable Material

Changes to the Copyright Act in 1909 included provision for an employer to own materials created through a work for hire provision. However, the failure of Congress to define
the terms “employer” or “work for hire” in the Copyright Act of 1909 left it to the judicial system to determine what these terms meant (Belanger v. Laboure College, 2011; Blanchard, 2010; Klein & Blanchard, 2011; Kranch, 2008; Lape, 1992). The result was the creation of the teacher exception (also referred to as the academic exception), which allowed academics to retain copyright of their teaching material, including lecture notes and syllabi (Blanchard, 2010; Gertz, 2013; Holmes & Levin, 2000; Klein & Blanchard, 2011; Loggie et al., 2007; Packard 2002; Strauss, 2011; Twigg, 2000). The case that first established the teacher exception was Sherrill v. Grieves in 1929 (Gertz, 2013; Lape, 1992; Packard, 2002). According to Lape (1992), the court that decided Sherrill v. Grieves determined that the work in question was not a work made for hire based on “the lack of judicial precedent and military school custom, rather than on finding that the definition of a work made for hire was not met” (pp. 12-13). In other words, rather than defining what work for hire meant in the Copyright Act of 1909, the court in Sherrill v. Grieves relied on standing custom and, in effect, crafted the teacher exception.

A second case, Williams v. Weisser, which was decided in 1969, made the teacher exception explicit (Lape, 1992; Strauss, 2011). In determining this case the court pointed out that there is a lack of fit between the work for hire doctrine and the long-standing academic tradition that allowed professors to own the copyright to their work (Blanchard, 2010; Packard, 2002). Instead, the court explicitly stated that the work for hire doctrine should not be applied when determining copyright ownership of professor’s lecture notes (Denicola, 2006; Lape, 1992; Strauss, 2011; Wadley & Brown, 1998). Although both of the aforementioned cases clearly establish the teacher exception to the Copyright Act of 1909, these cases were decided before the 1976 revision of the Copyright Act.
Uncertainty of continued existence of the “teacher exception”. One glaring omission in the Copyright Act of 1976 is that it does not include any reference to the teacher exception created by the courts (Aaron & Roche, 2015; Gertz, 2013; Kim, 2006; Kelley et al., 2002; Lape, 1992; Loggie et al., 2007; Strauss, 2011; Townsend, 2003; Triggs, 2005). The issue of whether the teacher exception survived the 1976 revision to the Copyright Act is a matter of debate. Some scholars think that the revision effectively abolished the teacher exception, while others believe that the teacher exception still exists (Aaron & Roche, 2015; Kim, 2006; Klein & Blanchard, 2011; Kranch, 2008; Lape, 1992; Loggie et al., 2007; Strauss, 2011; Townsend, 2003; Triggs, 2005). One argument that explains the omission of the “teacher exception” in the 1976 Act and argues for its continued existence is that it was so well-established and widely accepted that there was no need to address it within the Act itself (Centivany, 2011; Loggie et al., 2007; Townsend, 2003; Triggs, 2005). On the other hand, others argue that the omission itself is enough to have eradicated the exception (Loggie et al., 2007; Triggs, 2005).

Scholars arguing for the continued existence of the “teacher exception” point to two court cases from the Seventh Circuit that were decided after the Copyright Act of 1976 to support their claim: Weinstein v. University of Illinois and Hays v. Sony Corporation of America. However, in both cases the arguments for the continuance of the “teacher exception” were made in dicta, which has no legally binding or precedential value (Laughlin, 2000). The court in Weinstein v. University of Illinois, decided in 1987, ended up dismissing the suit brought by Weinstein, but not without acknowledging that there had been a traditional academic exception to the Copyright Law (Blanchard, 2010; Kelley et al., 2002; Packard, 2002). Furthermore, the court reasoned that many universities had established policies regarding copyright ownership and indicated that courts should look to those policies when deciding ownership issues (Centivany, 2011; Denicola,
However, the court stated that the teacher exception to the Copyright Act seems to have been lost with the 1976 revision and that the work-for-hire definition was broad enough that any academic writing might be considered a work for hire when applying it (Centivany, 2011; Denicola, 2006; Lape, 1992; Strauss, 2011; Townsend, 2003; Wadley & Brown, 1998).

A year later the same court made an about face on the issue when deciding *Hays v. Sony Corporation of America* in 1988. The court indicated that although the Copyright Act of 1976 may have abolished the teacher exception if one were to be entirely literal in their interpretation of the Act that, if forced to decide the issue, the court may rule that the teacher exception had survived (Denicola, 2006; Kim, 2006; Lape, 1992; Packard, 2002; Strauss, 2011). In stating this opinion, the court reasoned that Congress did not give any indication that the intention of the 1976 revision to the Copyright Act was to abolish the teacher exception (Bartow, 2003; Blanchard, 2010; Centivany, 2011; Denicola, 2006; Kim, 2006; Lape, 1992; Packard, 2002; Strauss, 2011). Furthermore, the court declared that although faculty used institutional resources when creating their academic output, they did so with little to no supervision as to the content of their output and that, in the absence of a written agreement, the traditional assumption has been that faculty own the copyright to their work (Centivany, 2011; Denicola, 2006; Strauss, 2011). The court indicated that removal of the teacher exception would “wreak havoc” on traditional institutional practices (Blanchard, 2010; Kelly et al., 2002; Packard, 2002; Strauss, 2011; Wadley & Brown, 1998). However, one of the arguments for continuance of the “teacher exception” outlined in *Hays*, that faculty create their academic output with little to no supervision from their institution, was weakened by a later Supreme Court case, which rejected using an employer’s control or right to control an employee’s work product as a criterion when applying the work-for-
hire doctrine (Denicola, 2006). Instead, the court indicated that that the common law of agency should be applied. Furthermore, the court challenged another of the *Hays* court’s argument when it stated that Congress’ silence in regard to the “teacher exception” was just that, silence (Centivany, 2011).

In 1989, the U.S. Supreme Court decided the case *Community for Creative Non-Violence v. Reid*. This case did not explicitly examine the teacher exception. Rather, it considered how the work-for-hire doctrine should be interpreted in response to inconsistencies in how federal appellate courts had been applying the doctrine (Centivany, 2011; Gertz, 2013; Laughlin, 2000). In deciding this case, the court determined that there were three steps that should be followed when performing a work-for-hire analysis. The first step is to establish that an employment relationship exists. Next, if an employment relationship is found, then the court should determine which category of work-for-hire the relationship falls under: an employee working within the scope of his or her employment or an independent contractor. Finally, if the court determines that an employment relationship is found to be one that falls within the “scope of employment” definition, then the court should decide if the work in question was, in fact, one that was created within the scope of employment. If, instead, the court finds that the employee was an independent contractor, then the court must determine if the work falls within one of the categories listed in the work-for-hire definition (Holmes & Levin, 2000; Wadley & Brown, 1998).

In order to determine if an employment relationship exists, the court turned to the common-law of agency based on section 220 of the Restatement (Second) of Agency. The court reasoned:
In the past, when Congress has used the term ‘employee’ without defining it, we have concluded that Congress intended to describe the conventional master-servant relationship as understood by common-law agency doctrine … Nothing in the text of the work for hire provisions indicate that Congress used the words ‘employee’ and ‘employment’ to describe anything other than [that relationship]. (as cited in Strauss, 2011, p. 32)

The court states that the basis for determining whether an employment relationship exists is articulated through the following thirteen-point test:

1) the hiring party’s right to control the manner and means by which the product is accomplished; 2) the skill required; 3) the source of the instrumentalities and tools; 4) the location of the work; 5) the duration of the relationship between the parties; 6) whether the hiring party has the right to assign additional projects to the hired party; 7) the extend of the hired party’s discretion over when and how log to work; 8) the method or payment; 9) the hired party’s role in hiring and paying assistants; 10) whether the work is part of the regular business of the hiring party; 11) whether the hiring party is in business; 12) the provision of employee benefits; and 13) the tax treatment of the hired party. (as cited in Blanchard, 2010, p. 64)

The court noted that all thirteen factors were equally important and that no individual factor should take precedence over the others when determining if a work is a work made for hire (Blanchard, 2010; Kranch, 2008).

Although the question of how to decide “scope of employment” was not at issue in the Reid case, the Supreme Court indicated that courts should apply section 228 of the Restatement (Second) of agency when deciding if an employee’s work product falls within the scope of
employment, which many courts have utilized since then (Denicola, 2006; Strauss, 2011). The factors used to determine if a work was done within an employee’s scope of employment are whether:

(1) the work was of the type the employee was hired to perform; (2) the creation of the work occurred substantially within the time and space limits of the employee’s job; and (3) the employee was actuated, at least in part, by a purpose of serving the employer’s purposes. (Wadley & Brown, 1998, p. 94)

However, there has been disagreement amongst legal scholars analyzing the Supreme Court criteria as to whether the work traditionally done by faculty would be considered a work for hire or not (Denicola, 2006; Klein & Blanchard, 2011; Packard, 2002; Townsend, 2003; Wadley & Brown, 1998). One clear implication of the Reid decision is that “the fact of employment is not what determines whether the works produced therein are to be considered works-for-hire. It is the nature of the works created, within the context of the employment relationship that is critical” (Wadley & Brown, 1998, p. 89).

**Possible demise of the “teacher exception”**. According to Townsend (2003), “The Seventh Circuit in Weinstein … transferred the “teacher exception” from a case-based judge-made law to one dictated by university policy” (p. 65). However, in the wake of Reid, scholars have debated whether the Reid decision eradicated the “teacher exception” as presented in Weinstein (Blanchard, 2010; Strauss, 2011; Townsend, 2003). Furthermore, there is still vigorous debate over whether the 1976 Copyright Act subsumed the original “teacher exception” that was established by the Sherrill and Williams courts (Aaron & Roche, 2015; Blanchard, 2010; Kim, 2006; Klein & Blanchard, 2011; Kranch, 2008; Lape, 1992; Loggie et al., 2007; Strauss, 2011; Townsend, 2003). Court cases decided since then have failed to clear up this debate as
some of them have included the content of institutional policies in making their decision and others have not. Still others have debated whether the “teacher exception” in its original form should apply.

In *Shaul v. Cherry Valley-Springfield Central School District*, decided in 2004, the Second Circuit court denied the “teacher exception” argument used by Shaul on the grounds that the school district did not have a formal, written copyright policy and because the teaching materials in question were not created for publication (Gertz, 2013; Strauss, 2011). Instead, the *Shaul* court based its decision on the common law of agency as outlined in *Reid* (Strauss, 2011). In 2006, the court in *Bosch v. Ball-Kell* looked to the policies of the institution while deliberating over whether a “teacher exception” should apply. However, the court did not use the exception as the basis for its decision; instead it applied the common law of agency rules (*Bosh v. Ball-Kell*, 2006).

One of the more significant cases regarding the existence of the “teacher exception” is that of *Molinelli-Freytes v. University of Puerto Rico*, decided in 2010 by the First Circuit court. Unlike the plaintiff in *Shaul*, the plaintiffs in this case were faculty at a university with a copyright policy in place. The plaintiffs in *Molinelli-Freytes* based their argument of faculty ownership on the “teacher exception,” requiring the court to rule on whether the exception even existed and could, therefore, be used as a legitimate reason for assigning ownership of copyrightable materials. The court examined the *Sherrill* and *Williams cases*, the dicta opinions from the Seventh Circuit in *Weinstein* and *Hays*, and case law in which rulings had been made regarding professors’ work output. The court observed:

Case law regarding the potential applicability of the “teacher exception” in the wake of the 1976 Act’s enactment is scant, and no reported opinion exists holding either that such
an exception survived or that it was extinguished by the 1976 Act. (Molinelli-Freytes v. University of Puerto Rico, 2010).

In addition, the court noted that the state court in Pittsburgh State University/National Education Association v. Kansas Board of Regents/Pittsburgh State University had examined the issue and had ruled that the “teacher exception” no longer existed, although this decision was not binding in the federal court system. Based on its deliberations, the court ruled that the “teacher exception” did not survive enactment of the 1976 Copyright Act and, therefore, could not be used as the basis for an argument claiming ownership of copyrightable material (Molinelli-Freytes v. University of Puerto Rico, 2010).

During its examination of the history of the “teacher exception”, the court in Molinelli-Freytes also argued against the reasoning set forth by the Williams and Hays courts for the continuation of the “teacher exception.” The court stated that:

In Williams, the court placed emphasis on its view that universities had no reason to “want to retain the ownership in a professor’s expression” in finding that a teacher exception applied. This rationale no longer rings as true as it once did, however. In an age of distance learning and for-profit institutions of higher learning, universities stand to gain much by retaining ownership of certain works created by their employees. (Molinelli-Freytes v. University of Puerto Rico, 2010)

In regard to the Hays court’s argument, the court responded:

The policy of continuing to apply the “teacher exception” so as to “defer to the settled practices of academic institutions and the traditional conditions of academic production” emphasized by Judge Posner in Hays no longer applies with the strength which it held in 1988. Most academic institutions today have already responded to the uncertainty
regarding the “teacher exception” by enacting policies, returning ownership of works traditionally copyrighted by professors to the professors themselves. (*Molinelli-Freytes v. University of Puerto Rico*, 2010)

Hence, although the court recognized that academic institutions have policies designating ownership in copyrightable material, the court decided that the “teacher exception” no longer exists. This leaves room for doubt as to whether the “teacher exception” based on the *Weinstein* opinion still survives. Furthermore, the court recognized that the landscape of academia has changed with the arrival of distance education, thus providing impetus for academic institutions to desire ownership of at least some of their faculty’s output.

In deciding *Belanger v. Laboure College* in 2011, the court determined that there was no basis for applying a “teacher exception” to the work-for-hire doctrine, citing the ruling in *Molinelli-Freytes* that the “teacher exception” no longer exists as support for their reasoning. The court in this case ruled that the materials in question were not copyrightable as they lacked originality. However, the court indicated that if the materials had been copyrightable that the institution would have been the owner of the plaintiff’s lecture notes as they were created within the scope of her employment and there was no document signed by the faculty member and the institution granting ownership to the faculty. Furthermore, in arguing that the institution owned the material, the court indicated that a “teacher exception” would not apply because it no longer existed, citing the *Molinelli-Freytes* case in their reasoning (*Belanger v. Laboure College*, 2011).

However, another case decided since the *Molinelli-Freytes* case examined the possibility of applying a “teacher exception.” In 2011, the court in *Roop v. Lincoln College* refused to allow a “teacher exception” argument for the plaintiff on the grounds that even if the *Hays* court did establish a “teacher exception” it would not apply in the plaintiff’s case because the works in
question (curriculum material) were not academic writings. Instead, the court ruled that the institution owned the materials because the material had been prepared in the scope of the plaintiff’s employment (*Roop v. Lincoln College*, 2011).

In 2015, the Seventh Circuit decided the case *Rahn v. Board of Trustees of Northern Illinois University*. In deciding that the work in question was a work for hire, the court stated that the university’s intellectual property policy (IPP) was unenforceable because it had not been signed by both the employee and the employer. Since that decision, the plaintiffs filed a Writ of Certiorari requesting that the Supreme Court review the case. Although the Writ requested consideration of several questions, the one of interest to this discussion is the third question:

Whether a university’s IPP, as a condition of a faculty’s employment contract, is an enforceable agreement granting ownership rights to faculty, (a) Whether a university’s IPP grant of ownership rights to faculty [the teacher exception to work for hire doctrine] survives the enactment of the Copyright Act of 1976 even without an IPP addendum to the employment contract. (*Rahn v. Board of Trustees of Northern Illinois University*, 2016).

Unfortunately, the Supreme Court decided not to hear this case, denying educators and educational institutions the opportunity to find out if the “teacher exception” still exists and, if so, whether it should follow the original *Williams* exception or if it should adhere to the *Weinstein* recommendation of examining the institution’s policies when deciding ownership.

From this overview of cases related to copyright ownership for faculty-created works it seems that courts are more inclined to apply the common law of agency when making their determinations. In addition, it appears that there is a discrepancy in how and whether the courts consider the copyright policies in place in educational institutions, with some courts requiring a
document signed by both the employee and the employer. Moreover, despite the ruling in *Molinelli-Freytes* that the “teacher exception” no longer exists, it appears that some courts are still willing to consider it when making their rulings.

**Implications of recent court rulings.** With the ambiguity surrounding copyright ownership, some academic institutions have drafted copyright policies. However, these policies vary between institutions and demonstrate that there are no universally accepted guidelines, which has led to some conflict and confusion over copyright ownership between faculty and academic institutions (Blanchard, 2010; Lape, 1992; Packard, 2002; Twigg, 2000). Although many institutions have created and adopted copyright policies, the question of who owns the copyright to intellectual property created by faculty remains unclear. Scholars indicate that some institutions assert full ownership of intellectual property based on the first work for hire definition in which works created by an employee in the scope of their employment are owned by the employer. Conversely, other institutions may assert full ownership through the creation of contracts, which falls within the purview of the second work for hire definition. Still other institutions cede ownership of faculty-created work to the faculty author. Many institutions fall somewhere in the middle, by either claiming joint ownership, or claiming ownership of some faculty work, but not all faculty work (Aaron & Roche, 2015; Denicola, 2006; DiRamio & Kops, 2004; Packard, 2002; Twigg, 2000; Zhang & Carr-Chellman, 2006).

According to Gertz (2013), “University copyright policies typically disclaim ownership of traditional scholarly works”, even as the institution may stake a claim on other faculty created work based on the first definition of a work for hire (p. 1483). However, as demonstrated in recent course cases, these policies may not be sufficient to determine ownership of intellectual property, because ownership is based on the Copyright Law, which has specific methods through
which ownership is created or transferred (Gertz, 2013; Packard, 2002). If the institution is, in fact, the owner of the copyright, then they would have to provide a written contract signed by both parties before the completion of the work in order to designate ownership to faculty as required by the second work-for-hire definition of the Copyright Law (Aaron & Roche, 2015; Centivany, 2011; Gertz, 2013; Holmes & Levin, 2000; Klein & Blanchard, 2011; Kranch, 2008; Lape, 1992; Loggie et al., 2007; Packard, 2002; Triggs, 2005; Wadley & Brown, 1998). On the other hand, if the faculty member is the copyright owner, then the institution’s intellectual property policy would not provide ownership to the institution unless there was a written agreement signed by both parties, which is not typically the case with institutional policies. Then again, in the case of a transfer of ownership from a faculty copyright owner to an institution, it would be sufficient for the faculty member to sign a transfer agreement (Gertz, 2013; Lape, 1992; Packard, 2002).

In summary, although institutions have been creating and implementing intellectual property policies in response to the ambiguity surrounding the “teacher exception” to the Copyright Act, these policies may not legally determine the ownership of a particular work. An examination of how courts approach the intellectual property policies of institutions showed that some courts will consider them when determining if a work was done in the course of the faculty member’s employment, while other courts require that the policy be signed by the employee and the employer. It is evident that institutions and their faculty should not rely on a “teacher exception” to delineate ownership of faculty-created work. Furthermore, any policies put into place regarding copyright should be clear in outlining ownership and it appears that at least some courts require that the institutional copyright policy be signed by both parties in order to make them enforceable.
Policy Issues

In an effort to address the ownership question, some organizations have put forth recommendations as to who should own faculty-created works. These recommendations are, for the most part, clearly divided between faculty ownership and institutional ownership, although the American Council on Education (ACE) promotes the idea that institutions and their faculty should work together to create intellectual property policies (Aaron & Roche, 2015). The American Federation of Teachers (AFT), the National Education Association (NEA), and the American Association of Community Colleges (AACC) promote faculty ownership of intellectual property, although the AACC also believes that institutions should receive royalties if faculty are able to commercialize their work (Aaron & Roche, 2015; Klein & Blanchard, 2011). The American Association of University Professors (AAUP) also recommends that faculty should own the copyright to their work. However, the AAUP recognizes that there are cases where a work is a work for hire, such as through a contractual agreement, and they recommend that an institution be reimbursed through royalties or a licensing agreement if a work requires unusual financial or technical support (Aaron & Roche, 2015; Klein & Blanchard, 2011; Kranch, 2008; Loggie et al., 2007; Nelson et al., 2014; Twigg, 2000; Zhang & Carr-Chellman, 2006).

The Association of American Universities (AAU) recommends that faculty should own scholarly materials. However, the AAU also endorses institutional ownership of online course material because they see the creation of online material as a collaborative endeavor. Furthermore, the AAU recommends that royalties should be shared amongst the creators of online courses and the institution. However, the AAU advocates for institutional ownership of course material that is created with substantial institutional resources (Kranck, 2008; Loggie et al., 2007; Zhang & Carr-Chellman, 2006). Bolstering the recommendation of the AAU is that of
the National Association of College and University Attorneys (NACUA), who also endorse institutional ownership for the creation of work that uses substantial university resources (Nelson et al., 2014). Based on the preceding recommendations it is clear that the ownership of online course material is a source of conflict between institutions and faculty. Resolving this conflict is important because faculty involvement plays an important role in the successful implementation of distance education.

One of the key aspects of a successful implementation of online learning is faculty involvement because faculty are the developers of the underlying curriculum taught in online courses and faculty are essential in the design, development, and facilitation of quality online courses (Shea, 2007; St. Phard, Jr., 2015; Tabata & Johnsrud, 2008). Yet studies have shown that many faculty hold a negative view of online learning and that administration is aware of this negative view (Allen & Seaman, 2012; Allen & Seaman, 2013; Herman, 2013; Hoyt & Oviatt, 2013; Maguire, 2005), although St. Phard, Jr. (2015) found that all of the faculty he surveyed held a predominantly positive view of distance education. Unfortunately, the viewpoints of faculty and administration regarding online education is at odds, with faculty demonstrating pessimism towards online education and administration viewing online education in a more positive light (Allen & Seaman, 2012; Allen & Seaman, 2013; Nash, 2015). Because of this disconnect, it is important for administration to learn about and, when possible, to mitigate any barriers that keep faculty from participating in distance education (Berge, 1998; Styron, Wang, & Styron, Jr., 2009).

**Faculty concerns.** St. Phard, Jr. (2015) states, “Despite the overall success of distance education, faculty members still have unaddressed concerns. A core issue in distance education is faculty motivation” (p. 16). According to Cook, Ley, Crawford, and Warner (2009),
Motivation Theory examines factors that influence an individual’s willingness to work towards institutional goals and asserts that the individual’s efforts are influenced by the effect that these efforts have on the individual’s needs (p. 150). This willingness to work towards institutional goals is vital for institutions trying to implement online education because an institution needs faculty involvement in order to be successful with their implementation (Cook et al., 2009; Ortagus & Stedrak, 2013; St. Phard, Jr., 2015). However, based on Motivation Theory, the needs of the individual must be attended to in order to motivate individuals to work towards institutional goals. Unfortunately, faculty are feeling pressure to develop distance learning courses (Blanchard, 2010; Hoyt & Oviatt, 2013; Packard, 2002), but their individual needs related to the intellectual property policies are not always being met, leaving faculty with a variety of issues.

One of the primary reasons for an institution to assert ownership of faculty created online course material is the need to increase revenue (Lape, 1992). The creation of distance learning material that is owned or controlled by the institution gives the institution a new revenue stream, yet many faculty think that they should also be able to profit from online course material that they have developed (Packard, 2002). On the other hand, many online courses are developed with funding provided by the institution, which leads to the question of whether faculty should be able to sell course material whose creation was funded by the institution (Blanchard, 2010). In addition, faculty have expressed concerns that the ability to digitally capture intellectual property used in distance education may lead to faculty positions being eliminated (Maguire, 2005; Zhang & Carr-Chellman, 2006).

The question of intellectual property ownership raises other questions of concern to faculty. One of those questions is whether faculty can take the material they have created for an
online course with them if they move to another institution (McPherson & Bacow, 2015; Zhang & Carr-Chellman, 2006). According to Zhang and Carr-Chellman (2006), “Because scholars are highly mobile, and tend to align more with their disciplinary fields than their universities, faculty are very concerned about their mobility as scholars, designers, and creators if universities claim strong ownership and rights on courseware” (p. 175). Many faculty believe that they should be able to take their work with them should they change jobs (Blanchard, 2010; Packard, 2002). Conversely, some institutions have begun to institute policies that claim ownership if course materials were created using substantial institutional resources, or an institution may require a faculty member to reimburse the institution for the resources used to create course material that the faculty member is earning money from (Blanchard, 2010).

Another question that arises as a result of intellectual property policies is that of control. Faculty have an interest in ensuring the fidelity of course material by updating and revising the material (Lape, 1992; McPherson & Bacow, 2015; Zhang & Carr-Chellman, 2006). However, according to copyright law, it is the owner of the copyright who has control over the work (Gertz, 2013; Packard, 2002). Faculty are concerned that institutional ownership will allow for changes that do not require the approval of the faculty author of the course material, course material being offered without proper attribution to the author of the material, or a course being offered that is not current with changes in the field (Zhang & Carr-Chellman, 2006). However, institutions are concerned that faculty may choose to update too often, allowing such faculty to earn money or credit for updating a course when it was not needed (Zhang & Carr-Chellman, 2006).
Past Research on Institutional Policies Regarding Online Course Ownership

A search of the literature for studies examining institutional policies pertaining to intellectual property uncovered eight previous studies. These were the only studies found that investigated the content of these types of policies. Four of the studies were survey research and four were policy analyses. The survey research studies examined a variety of institutional types, but the policy analyses were all based on an original study done by Lape in 1992, which examined policies at research universities. The other three policy analyses were set up to repeat Lape’s study on research universities, which is useful as it provides a look at how these policies have changed over time. What follows is a discussion of what each study found and a summary of what was learned from the studies.

Survey studies. In 2002, Kelley et al. conducted a study in which they surveyed the chief academic officers of 68 schools with distance education programs. The institutions studied were the population of two- and four-year institutions with regional accreditation having enrollments greater than or equal to 2000 students taking distance education courses. The resulting population encompassed 79 institutions, of which 68 responded. They found that 29% of the institutions surveyed did not have an intellectual property policy (IPP). Kelley et al. also determined that 48% of respondents used contracts to either supplement their existing policy or that an institution might have a contract in place of having a policy. The purpose of this study did not encompass the content of the institutions’ IPPs. Rather, the authors were focused on three areas of interest: Whether the institution had a policy regarding copyright ownership in the context of distance education; whether there were separate or subordinate policies regarding faculty ownership; and whether the ownership issue was governed by a collective bargaining
agreement. Although the third question is interesting, it is not the focus of the current study, so the results are omitted from this discussion.

DiRamio and Kops (2004) examined several issues related to intellectual property ownership, including shared governance when creating policies, types of ownership, and the Fair Use Exemption and its relationship to course materials. For the purposes of this discussion only the question of institutional ownership will be considered. For their study, DiRamio and Kops randomly sampled higher education institutions in the United States. The sample included large research universities, master’s and baccalaureate institutions, and junior/community colleges that offered distance education courses. A survey was conducted via email and sent to 180 faculty and administrators. There were a total of 60 responses, comprised of faculty and administrators from 43 institutions. DiRamio and Kops found that 58% of institutions surveyed did not have a policy in place addressing the ownership of distance education courses. In addition, they indicate that although the differences were not statistically significant, the data reveal that there might be a relationship between size and type of institution and the existence of an institutional policy delineating ownership of distance education courses. Furthermore, DiRamio and Kops determined that larger institutions lean towards faculty ownership of online courses and that smaller institutions were more likely to favor institutional or works-for-hire policies. They also indicate that there are a wide variety of policies in place delegating ownership and that the ownership claims at some schools are dependent upon the amount of institutional support that is required to create the course.

In 2013, Hoyt and Oviatt investigated institutional policies and practices regarding organization and governance of online courses, faculty incentives to develop and teach online courses, course ownership, and the impact of these policies on faculty motivation to develop and
teach online courses. For purposes of this discussion we will focus on the results involving frequency and types of IPPs in place at the institutions studied. Hoyt and Oviatt conducted a survey of administrative officers at doctorate-granting research universities, and received responses from 110 institutions, representing 37% of the total population. They found that 71% of the institutions surveyed had a policy in place delineating ownership of intellectual property for online courses, 12% had no policy, 13% were developing a policy, and 4% of respondents did not know if there was a policy. Furthermore, of the institutions with policies, 10% designated faculty ownership of online course material, 41% designated joint ownership, 36% designated institutional ownership, and 13% had some other arrangement.

Also in 2013, White conducted a study of faculty at two universities in West Virginia to determine their perceptions of online course ownership policies at their institution and their perceptions of what they believe the ownership policies should encompass. This discussion will focus on the results pertaining to the perceptions of the actual policies in place at these two institutions. From the population of approximately 2021 full- and part-time faculty, responses were received from 231 faculty members. White found that 8.6% of the respondents believed that the university owned the course content, 20.6% thought that the faculty owned the content, 29.3% indicated that there was some type of joint ownership, and 41.3% did not know who owned the content. One interesting aspect of this study was that the respondents were asked who owned online course content at the beginning of the study and 22.7% responded at that time that they did not know. However, at the end of the survey, after being asked about various aspects of the policies, there were 41.3% who responded that they did not know in response to the ownership question at the end of the study. This clearly demonstrates that even when people think they know what type of ownership policies their institution has in place they may discover
that they really do not know when pressed about specific aspects of the policy. In addition, because this study surveyed faculty from two institutions but resulted in at least three different types of ownership responses (beyond the “do not know” option), this demonstrates that more than 41.3% of the faculty surveyed may not really know the policy at their institution, but the study does not reveal the content of the actual policies in place at the two universities.

**Document analyses.** In 1992, Lape studied the intellectual property policies at 70 research universities classified as “Research Universities I” by the Carnegie Foundation. Lape found that eleven of the universities studied had no written policy regarding copyright ownership and that five universities had drafts of policies, but no policy actually in place. Furthermore, Lape states that “it is not clear what proportion of the policies collected are expressly incorporated by reference [in a written agreement signed by both the institution and the faculty member], although six of the policies mention such a signed writing” (p. 223). In addition, Lape points out that some institutions stake a claim on faculty work based on significant or substantial use of resources in creating the work. Lape describes a variety of ownership scenarios within the policies, including joint ownership or faculty ownership with a non-exclusive, royalty-free license for the university. In all cases, the university claimed ownership of at least some faculty work. However, Lape found that 16 of the policies disclaimed copyright ownership of traditional scholarly works, such as books or journal articles. Moreover, 46 policies allowed for the creator of the work to share in any income generated from the work. A small number of policies provided faculty with some control of the work they created. Specifically, five policies allowed the creator of a work to control how the university uses the work, seven policies provided the creator with the right to revise the work, and one gave the creator of a work the power to make derivatives of that work.
Packard (2002) revisited the policies of the same institutions that Lape had studied 10 years prior. She found that of the 70 institutions studied one did not have a policy and three had drafts of policies. Furthermore, Packard observed that there were still a variety of ownership scenarios, although all of the policies claimed at least some faculty work, which concurs with Lape’s findings. Similarly, Packard noted that many institutions stake a claim to faculty work based on substantial use of resources. The number of policies with this type of claim increased from 42 in 1992 to 57 in 2002. In addition, Packard saw a substantial increase in the number of institutions disclaiming scholarly work. The number rose from 16 to 49 within a span of ten years. Furthermore, Packard determined that the number of universities that were sharing royalties with faculty creators had risen from 46 to 50. Moreover, Packard found that the number of policies that were part of an agreement signed by the faculty member and the university had grown from six to eight. Finally, Packard observed small increases in the number of policies addressing faculty control over their work. Policies providing faculty with the right to control how universities used their work rose from five to seven; policies giving faculty the right to revise their work increased from seven to ten; and the right to create derivatives of their work grew from one to six.

In 2005, Loggie et al. (2007) followed up on the work done by Lape and Packard by examining the policies at 42 Carnegie Doctoral Research-Extensive universities, which may or may not include the institutions studied previously. However, Loggie et al. point out that Carnegie classifications change over time and that the institutions sampled for their study had a similar classification to the institutions that Lape sampled in the original study. In their study, Loggie et al., found that all of the institutions in their study had policies delineating ownership of intellectual property. They determined that there was a variety of ownership scenarios similar to
those reported by Lape and Packard, but that the number of institutions claiming joint ownership had increased from 2002 to 2005 by 19%, the number specifying a royalty-free license for the university increased 27%, and the number that designated that royalties be shared increased by 23%. In addition, Loggie et al. found that 95% of the policies claimed at least some faculty works, with 83% basing their claim to ownership on substantial use of institutional resources. Furthermore, although 93% designated faculty ownership of scholarly work, only 31% of the institutions studied specified faculty ownership of materials posted online. Moreover, 36% of these institutions claimed ownership of distance education material. Loggie et al. noted that there was an increase in the number of institutions that provided some control to faculty creators over their work. They determined that 24% of the institutions provided faculty creators with the right to control the use of their work, and 19% granted faculty creators the ability to create derivatives of their work. Additionally, Loggie et al. observed an increase in the number of policies requiring faculty to sign a written agreement had increased to 40%, and the number requiring a signature from a university official increased to 21%.

Gertz (2013) followed up on the work done by Lape and Packard, but did not mention the Loggie et al. study. For this study, Gertz sampled “Research Universities – Very High Research Activity” and explained that Carnegie classifications are updated in five-year intervals and that this classification matched Lape’s 1992 classification. Gertz notes that there were 108 universities found under the current classification, which is clearly a different sample than that studied by Lape and Packard. Gertz reports that approximately one-third of the policies claimed ownership of faculty work, with some exceptions noted. The remaining two-thirds of institutions disclaim faculty works, but with some exceptions. Gertz explains that both types of policies tend to disclaim ownership of traditional scholarly works, but that most of the policies claimed works
that were specifically assigned to an employee or that were created using a significant or unusual amount of institutional resources. Gertz asserts that institutions need to have a written agreement between the faculty and the institution in order to satisfy the requirements of the copyright law, but she does not report how many (if any) of the policies she studied included this requirement.

**Summary of past research.** Taken together, these studies reveal a variety of institutional policies and a snapshot of how policies have evolved over time. However, as demonstrated by White’s (2013) and Hoyt and Oviatt’s (2013) studies, faculty and administrators at the institutions studied do not always know the policy at their institutions. Furthermore, White’s study of faculty at two different institutions resulted in three different types of ownership policies. Having more than one policy at an institution is unlikely, therefore White’s study shows that the respondents to surveys may choose the wrong classification for their institutional policy. Moreover, White’s study revealed that people may discover that they do not really know the policy when pressed about specifics. This demonstrates a need to examine the actual policies at the institutions sampled.

Kelley et al.’s (2002) study revealed that almost half of the institutions surveyed had contracts in place to supplement existing policy. As discussed previously, simply having a policy may not be enough to satisfy the requirements of the Copyright Law; signatures may be required (Lape, 1992; Packard, 2002; Gertz, 2013). Therefore, an examination of policies at higher education institutions should also examine whether there is a written agreement signed by the necessary parties in order to legally designate ownership. DiRamio and Kops (2004) study indicated that there might be differences in the types of policies found at different types of institutions. Although their findings were not statistically significant, their results were suggestive of the possibility that there may be differences. Therefore, investigating whether
there are differences between types of institutions is worth pursuing. An examination of the findings of these studies revealed specific categories that will be used as the initial categories for this study. Specifically, the categories are: (a) types of ownership; (b) financial considerations, such as payment for content creation or reimbursement for resources used; (c) control of faculty-created content; (d) underlying rationale for claiming ownership of content; and (e) settlement of disputes.

**Summary**

This chapter began by examining the development of distance education, which originated with correspondence study. As technology developed, the means through which distance education was delivered expanded to include these new technologies. However, the growth of distance education in the online format has led to conflict between faculty and administration as to who owns online course content, which falls under the provision of the Copyright Act (Blanchard, 2010; DeVary, 2008; DiRamio & Kops, 2004; Loggie et al., 2007; St. Phard, Jr., 2015). The next section of this chapter followed the development of the Copyright Act as it changed to allow ownership by employers under the work-for-hire provision of the Copyright Act. This section also examined changes to the Copyright Law regarding fair use of copyrightable material by educational institutions. The third section of this chapter examined court cases related to ownership of faculty-created works and the development of the teacher exception to the copyright law through those cases, but showed that there is ambiguity regarding the continued existence of the teacher exception. The fourth section outlined conflicts between various educational organizations regarding the ownership of faculty created material and the concerns faculty have about the ownership issue. The last section investigated past research into the Intellectual Property Policies (IPPs) of higher education institutions. This investigation
showed that there is a need to examine the IPPs at a variety of higher education institutions to determine the content of those policies and to uncover whether there are differences between types of institutions.
Chapter 3: Methodology

The purpose of this study is to identify the key components of intellectual property policies in public higher education institutions and determine how these components differ. This chapter describes the research design and methodology that was used to uncover those key components and determine how they vary within higher education institutions. It includes a restatement of the purpose of the study, the research question, research design, a description of the data analysis procedure, a discussion of ethical considerations, a description of the researcher’s background and bias, study limitations, and a summary of the chapter.

Statement of Purpose

In response to the increased demand for online education, the number of higher education institutions offering online courses has grown rapidly (Kentnor, 2015; Longstaff, 2014; Maguire, 2005). Furthermore, many state institutions began offering distance education as a way to increase revenue as finances provided by state budgets to higher education institutions have continued to decrease (Klein & Blanchard, 2011; Kranch, 2008; Styron, et al., 2009). The shrinking financial support provided by state budgets have created a number of financial issues for higher education institutions, such as the necessity to increase student tuition to help cover the cost of general operating expenses, the increase in costs associated with providing student services, and the need to increase student/teacher ratios (Styron et al., 2009). However, one of the more pressing issues that institutions are grappling with is the issue of who owns online course content (Klein & Blanchard, 2011). In response to the ambiguity surrounding course content ownership, many institutions created policies to delineate ownership (Blanchard, 2010; Kelley, Bonner, McMichael, & Pomea, 2002; Lape, 1992).
A review of the literature on intellectual property policies in higher education institutions demonstrated that there is very little research regarding the contents of those policies. Of the research that has been done, most have focused on doctorate-granting research-intensive institutions (e.g. Gertz, 2013). Another issue found with some of the previous studies was that they determined the content of the intellectual property policies at the institutions they studied through surveys rather than examining the actual policies, which may not accurately reflect the content of those policies. This study seeks to fill in this gap in the literature by examining the intellectual property policies of public higher education institutions as a whole in order to determine the key components of those policies and how they differ.

**Research Question**

A review of the literature regarding intellectual property policies indicated that there is very little research regarding ownership of online course materials in public higher education institutions. The literature review began with a general search of all library resources at the University of North Florida using the search term “intellectual property policies study”, but this search yielded too many results. In addition, a review of the first 10 pages of the results of the initial search did not yield any empirical studies and few relevant results. The search was then limited to the following databases: Education Source, Academic Search Complete, American Doctoral Dissertations, ERIC, and Index to Legal Periodicals and Books Full Text. A search of these databases using the terms “intellectual property” and “study” yielded the studies by White (2013) and Kelley et al. (2002). The terms “copyright ownership” and “study” unearthed the study by Gertz (2013). A search using the term “online course ownership” found the studies by Hoyt and Oviatt (2013) and Loggie et al. (2007). The terms “distance education” and “intellectual property” yielded the study by DiRamio and Kops (2004). Searches using other
terms, such as “copyright ownership” and “faculty ownership” did not yield any further results. The studies by Lape (1992) and Packard (2002) were referenced in both the Loggie et al. study and the Gertz study and were retrieved by searching for the article name and author name in the University of North Florida Library’s search of all library holdings.

Of the studies unearthed through the literature review, most of the researchers focused their efforts on doctorate granting institutions. Although it is useful to know what types of policies are in place at doctorate granting institutions, this leaves a gap in the literature regarding the policies at public higher education institutions as a whole. The studies done by Kelley et al. and DiRamio and Kops did select their study sample from different types of higher education institutions, but those studies were survey studies and did not analyze the institutional policies, which may not accurately reflect the content of the actual policies. The lack of research in this area led to the development of the following research question:

2. What is the differentiation of public university policies concerning ownership of course content of online classes developed by faculty?

Research Design

This study utilizes a document analysis design that has both quantitative and qualitative characteristics. Schilling (2006) indicates that the research methodology for a study should be chosen based on what the researcher is trying to find out and that the choice should be based on the conceptual framework and the research questions. Bowen (2009) describes document analysis as an iterative procedure that “combines elements of content analysis and thematic analysis” (p. 32). Moreover, Bowen explains that the elements of content analysis utilized for document analysis involve placing data into categories related to the research question. The elements of thematic analysis used involve identifying major themes within the documents under
study and using those themes to create categories, although Bowen indicates that pre-determined categories may be used instead. According to Le Gouais and Wach (2013), document analysis facilitates “impartial and dependable analysis of written policies” (p. 441). For the purposes of this study, the document analysis followed the basic procedures of content analysis and started with a pre-determined set of categories that were identified through the literature review. The predefined categories that served as the initial framework for the study were: (a) types of ownership, (b) financial considerations, such as payment for content creation or reimbursement for resources used, (c) control of faculty-created content, (d) underlying rationale for claiming ownership of content, and (e) settlement of disputes. The following discussion on content analysis describes the rationalization for content analysis and the elements of content analysis that were utilized for the document analysis procedures of this study.

According to Dispenza, Harper, and Harrigan (2016), “Content analysis is an especially suitable methodology when there is not enough existing information or knowledge regarding a certain phenomenon” (p. 253). Furthermore, content analysis is appropriate when the texts being analyzed were not created for research purposes (Krippendorff, 2013). Cho and Lee (2014) state that the underlying purpose of content analysis is to “extract categories from the data” (p. 5). Moreover, content analysis is useful in identifying trends through systematic categorization of the data which can then be transformed into numerical data through which meaning can be derived (Bozkurt, Kumtepe, Kumtepe, Aydin, Bozkaya, & Aydin, 2015; Cho & Lee, 2014; Dispenza et al., 2016; Finfgeld-Connett, 2014; Krippendorff, 2013; Yalçın, Yavuz, & Dibek, 2015). However, researchers disagree on the framework of content analysis. Some researchers believe that content analysis is strictly a quantitative method, while others view it as a qualitative approach to research (Elo & Kyngäs, 2008; Krippendorff, 2013; Neuendorf, 2017). A third
The approach is to view content analysis as both a quantitative and qualitative methodology (Bozkurt et al., 2015; Elo & Kyngäs, 2008; Krippendorff, 2013; Saldaña, 2016), which is the approach utilized for this study.

Within the context of content analysis there are two ways in which categories are determined: inductive and deductive. A researcher using an inductive approach has little knowledge of the phenomenon being studied. Because of the lack of previous knowledge, the researcher determines categories based on an examination of the raw data (Cho & Lee, 2014; Elo & Kyngäs, 2008; Finfgeld-Connett, 2014; Mayring, 2000; Schilling, 2006). The deductive approach begins with a framework of categories that are either derived from theory or from previous research and a research question or hypothesis to guide the content analysis (Cho & Lee, 2014; Elo & Kyngäs, 2008; Finfgeld-Connett, 2014; Mayring, 2000; Schilling, 2006). Researchers may also choose to use a combination of an inductive and deductive approach by beginning with a framework in mind, but then modifying their categories based on their examination of the data (Finfgeld-Connett, 2014; Schilling, 2006). When beginning with a framework in mind, Schilling (2006) advises that the initial framework should be made explicit in order to ensure transparency. This study utilized both an inductive and deductive approach by beginning with the categories derived from previous studies, then modifying the categories as needed through examination of the data. During the analysis process, the original five categories were retained and a sixth category was added: (f) disclosure and assignment.

The review of literature regarding intellectual property policies demonstrated that there is scant research on these policies in public higher education institutions. In addition, these ownership policies are real-world texts that were not created for a research purpose. As stated previously, the purpose of this study is to determine the key components of intellectual property
policies at public higher education institutions and see how these components vary within higher education institutions. Document analysis lends itself well to this particular study as it allows for identification of categories within the intellectual property policies, through which the key components of the ownership policies can be identified and then compared to see how they differ. In addition, document analysis facilitates “impartial and dependable analysis of written policies” (Le Gouais & Wach, 2013, p. 441). Therefore, based on the lack of knowledge regarding intellectual property policies, the real-world nature of the policies, the purpose of this study, and the need for an impartial, dependable analysis of the intellectual property policies being studied, document analysis was chosen as the methodology. For the purposes of this study document analysis is defined as a research design method “that employs both qualitative and quantitative approaches to study empirical documentation with the purpose of grouping similar cases or data according to certain concepts and schemes and then to organize and interpret the data systematically” (Bozkurt et al., 2015, para. 11).

Population of study. The population for this study was the set of public higher education institutions that are included in the Carnegie Classification of Institutions of Higher Education that offer distance education. The Carnegie Classification list includes “Title IV eligible, degree-granting colleges and universities in the United States represented in the National Center for Education Statistics IPEDS system that conferred degrees in 2013-14” (The Trustees of Indiana University, 2015, Definitions section, para. 1). This list is provided in an Excel spreadsheet and it allows for disaggregation of the data based on an institution’s classification of being a public institution, private not-for-profit institution, or private for-profit institution.


**Sample selection.** Sampling refers to the process of selecting a subset of a population that a researcher wishes to study (Gentles, Charles, Ploeg, & McKibbon, 2015; Neuendorf, 2017). Although gathering data from the population is ideal, sometimes it is not practical. When a population is large it is commonplace for researchers to work with a sample drawn from the larger population, as using a sample makes the study more manageable (Guetterman, 2015; Krippendorff, 2013; Neuendorf, 2017). Prior to selecting a sample, the population must be well-defined (Cresswell, 2014). Once the population is determined it serves as the sampling frame from which the sample will be drawn (Gentles et al., 2015; Neuendorf, 2017). The sampling frame is defined as the list of all possible individual units that fit the population criteria (Krippendorff, 2013; Neuendorf, 2017). For this study, the higher education institutions included in the Carnegie Classification list that are designated as public institutions served as the sampling frame. The list contains 1644 public higher education institutions, of which 716 are classified at a level of 4 or more years and 928 are classified as at least 2 but less than 4 years. This list of public institutions was winnowed down further so that only institutions that offer distance education were selected for sampling. Once the institutions were selected, their intellectual property policies were retrieved for evaluation as these documents were used as the units of analysis for this study.

**Sample size.** The next step in the sampling process is determining the sample size. There does not appear to be a customary method used to determine the correct sample size for document analysis (Neuendorf, 2017). However, one method employed by researchers is to select a probability sample to allow for generalization of their findings (Elo & Kyngäs, 2008; Neuendorf, 2017). The probability sample should be selected using a random sampling technique, where random sampling ensures that every element of the sampling frame has an
equal chance of being selected (Cresswell, 2014; Neuendorf, 2017; Triola, 2014). Typically, the size of probability samples is determined based on statistical concepts, such as standard errors and confidence intervals (Krippendorff, 2013; Neuendorf, 2017).

In order to determine the sample size, the formula \( n = \frac{Z^2 \times p(1-p)}{\varepsilon^2} \) is used for an infinite population. In the formula, \( n \) is the sample size, \( Z \) represents the Z-score corresponding to a particular confidence level, \( p \) is the population proportion, and \( \varepsilon \) corresponds to the margin of error. When the population is finite and the size of the population is known, then the sample size can be adjusted by taking the original sample size and using the formula \( n' = \frac{n}{1 + \frac{(n-1)}{N}} \), where \( N \) represents the size of the population, to determine the correct sample size for the finite population. The second formula should only be applied if the original sample size exceeds 5% of the population size (Godden, 2004; Pennsylvania State University, 2017; Triola, 2014).

For this study, a confidence level of 95% was chosen, with a margin of error of 5%, which is a common selection for many studies (Cowles & Nelson, 2015; Phillips, Aaron, & Phillips, 2013). The population proportion is unknown, therefore a value of 50% will be used for \( p \), as this will yield the most conservative estimate of the sample size (Neuendorf, 2017; Triola, 2014). Using the first formula above, the sample size for an infinite population was found to be 384, which is greater than 5% of the population size. Next, the second formula was employed to determine the final sample size of 312 for the finite population.

Once the sample size is chosen, there is still the question of how the sample will be selected that must be considered. Guetterman (2015) indicates that it is not unusual for qualitative samples to be selected using quantitative approaches. For this study, which utilized
both qualitative and quantitative methods, the sample was selected using randomization. Because the sampling frame is contained in an Excel spreadsheet, the random number generator function was utilized in conjunction with the rank function to generate a random sample from the list. Once the random numbers were generated, the institutions with the numbers 1 through 312 next to them were initially included in the sample. Institutions included in the initial sample that did not offer distance education were removed from the sample and the next institution in the random number list was selected. This process continued until the sample contained only public higher education institutions that offer distance education.

**Validity and reliability.** Validity refers to the extent to which a measurement process correctly reflects the construct it is trying to measure, thereby accurately representing the population that is under examination (Krippendorff, 2013; Neuendorf, 2017). This study utilized two approaches to ensure validity of the results. The first approach was to provide a description of possible bias on the part of the researcher (Creswell, 2014), which is described in detail below. The second approach used to ensure validity is through triangulation of the data (Cho & Lee, 2014; Creswell, 2014; Marshall & Rossman, 2011; Neuendorf, 2017). This study utilizes both inductive and deductive approaches in determining the categories used to measure the data. When multiple methods are used to determine categories it serves as a confirming strategy through which the categories are triangulated, thus strengthening the validity of the study (Creswell, 2014; Neuendorf, 2017).

Reliability refers to the extent to which the results of a study can be reproduced (Krippendorff, 2013; Neuendorf, 2017). In other words, when repeated trials of the study yield similar outcomes then we say that the results of the study are reliable. When human coders are used to perform a document analysis the reliability of the results is typically determined using
intercoder reliability measures, where intercoder reliability refers to the level of agreement between the coders (Bozkurt et al., 2015; Creswell, 2014; Marshall & Rossman, 2011; Mayring, 2000; Neuendorf, 2017; Schilling, 2006). Another method of determining reliability is that of intracoder reliability. This method refers to the level of agreement when an individual coder codes the data and then codes the same data after a significant period of time has passed (Schilling, 2006). However, Schilling (2006) indicates that intercoder reliability is a better measure of reliability than intracoder reliability. An additional way to ensure reliability is through validation of the analysis by an external expert, which serves to reduce bias, ensure credibility, and improves reliability of the results (Le Gouais & Wach, 2013).

This study utilized a combination of reliability measures to assess the reliability of the results. First, the study used intracoder reliability to assess the reliability of the author’s coding. Second, a legal expert was consulted after encoding a subset of the sample and revising the original coding document, which provided external expert reliability. The coding document was revised again based on the advice of the legal expert. Next, a second coder and the researcher coded a subset of the sample, which provided some intercoder reliability of the results. In addition, the second coder and the researcher jointly resolved any differences within the researcher’s two codings of the sample.

The level of agreement in each case of intracoder and intercoder reliability was evaluated using Cohen’s kappa, which is a common measure utilized to assess reliability (Bozkurt et al., 2015; Mayring, 2000). However, there is some variance in the level at which results are considered acceptable. Mayring (2000) indicates that the standard for coder agreement is sufficient at .7 or higher. Krippendorff (2013) indicates that measures reaching .80 or higher show reliability of results, that measures reaching .67 to .79 lead to tentative conclusions about
results, and that anything lower than .67 is unacceptable. Altman’s scale indicates that intercoder and intracoder agreement is poor for values less than .20, fair for values from .21 to .40, moderate for values from .41 to .60, good for values from .61 to .80, and very good for values greater than .81 (as cited in Bozkurt et al., 2015). Altman and Krippendorff have similar benchmarks for determining reliability (.81 and .80, respectively) and their thresholds are higher than that set by Mayring (.7), but Altman’s scale allows for a deeper discussion of the implications of results that may fall below the acceptable threshold and must, therefore, be considered tentative or unacceptable. Consequently, Altman’s scale was utilized when determining intracoder and intercoder reliability for the study.

**Data Analysis**

When conducting a document analysis following content analysis procedures, there are three main phases that occur during the process: preparation, organizing, and reporting (Dispenza et al., 2016; Elo & Kyngäs, 2008). These phases can be broken down into steps (see *figure 2*), depending on whether the study protocol is based on an inductive or deductive design, or both. The first step in the preparation phase is to determine the unit of analysis, which can be a single...
word, a theme, or an entire document (Cho & Lee, 2014; Dispenza et al., 2016; Elo & Kyngäs, 2008; Krippendorff, 2013; Neuendorf, 2017; Yalçin et al., 2015). The next step in the preparation phase is for the researcher to spend time immersing himself in the data by reading the textual materials, more than once if necessary, to become familiar with the nature of the data (Dispenza et al., 2016; Elo & Kyngäs, 2008; Finfgeld-Connett, 2014; Krippendorff, 2013).

The next phase is the organization phase, which is when the actual analysis occurs. The first step in this phase is the creation of categories. Categories consist of elements with shared meanings and must be mutually exclusive and exhaustive (Cho & Lee, 2014; Neuendorf, 2017; Schilling, 2006). When using an inductive approach, the categories are created through repetitive examination of the data that makes use of a coding scheme to aid in the identification of the categories (Cho & Lee, 2014; Elo & Kyngäs, 2008; Mayring, 2000; Schilling, 2006; Yalçin et al., 2015). A deductive approach uses categories that are predetermined through theory or prior study and uses an analysis matrix to organize the data for analysis (Cho & Lee, 2014; Elo & Kyngas, 2008; Finfgeld-Connett, 2014; Mayring, 2000). In practice, many researchers begin with an initial categorization and then refine the categories through an iterative process as they read through the data, thus combining the inductive and deductive processes (Schilling, 2006).

The next step in the organization phase occurs when the data are coded (placed into the categories) to allow for analysis of the data set (Cho & Lee, 2014; Elo & Kyngäs, 2008; Yalçin et al., 2015). Elo and Kyngäs (2008) indicate that it is essential that the researcher keep the research question in mind as he or she examines the data. In addition, Schilling (2006) recommends performing an interrater reliability check after 10 to 50 percent of the data has been coded. She indicates that the results of this formative check should be used to revise the coding
scheme and/or categories. Once all of the data have been coded, a final check of interrater reliability should be performed prior to interpreting the results of the analysis (Schilling, 2006; Yalçin et al., 2015). In order to facilitate the interpretation of the results, descriptive analysis, also known as frequency analysis, can aid in identifying trends or population characteristics through the use of frequencies or percentages (Bozkurt et al., 2015; Schilling, 2006, Yalçin et al., 2015). On the other hand, Krippendorff (2013) indicates that descriptive analysis is only appropriate if the frequencies have meaning or when it aids in answering the research question.

The final phase is the reporting phase. The reporting process includes more than just providing the results of the study. The researcher should also include a thorough description of the research process in order to be transparent, which lends credibility to the study (Elo & Kyngäs, 2008; Marshall & Rossman, 2011). This study followed the procedures outlined above. However, as with any qualitative study, the design was considered to be flexible so that changes could be made during the implementation of the procedure as needed (Charmaz, 2014; Marshall & Rossman, 2011). The units of analysis for this study were the intellectual property policies retrieved from the institutions in the final sample. The predefined categories that served as the initial framework for the study were: (a) types of ownership, (b) financial considerations, such as payment for content creation or reimbursement for resources used, (c) control of faculty-created content, (d) underlying rationale for claiming ownership of content, and (e) settlement of disputes. During the analysis process an additional category was added: (f) disclosure and assignment.

Ethical Considerations

According to Neuendorf (2017), many document analyses are conducted on publicly available content and do not require interaction with human subjects. In these instances, the
collection of data is considered to be an unobtrusive data collection method. As such, approval by an Institutional Review Board (IRB) is often unnecessary (Neuendorf, 2017). For this study, the University of North Florida’s IRB was consulted to obtain verification that their approval was unnecessary (see Appendix A). Another ethical consideration is whether analyzing their publicly available intellectual property policies could lead to harm for the institutions included in the study (Creswell, 2014; Marshall & Rossman, 2011). The researcher did not anticipate any harm that could arise as a result of the study. However, throughout the analysis procedure, consideration was given as to whether any aspect of the procedure could have a negative impact on the organizations included in the study.

**Researcher Background and Bias**

One approach to ensure validity of research results is to provide a description of possible bias on the part of the researcher (Creswell, 2014). Currently, I have been teaching mathematics in higher education institutions for approximately eleven years. For the past ten years, I have taught online courses at the institution where I am employed as a full-time faculty member. During this time, I developed an interest in learning about the factors that affect faculty motivation to teach and develop online courses. One of the factors affecting faculty motivation that I uncovered through a review of literature is the question of who owns online course content developed by faculty. This discovery led to the current study regarding ownership of online course content so that I could investigate this topic further.

**Study Limitations**

One limitation to this study is that the policies examined were collected through each institution’s website. As such, there is a possibility that these websites may not have been updated to reflect the institution’s most recent policy. In addition, there were indications that
some of the institutions chosen for the sample had policies, but those policies were not publicly accessible and were, therefore, not included in the document analysis.

**Summary**

This chapter included a description of the research design, population, and sample for the study. In addition, it included information about the data analysis procedure, a discussion of ethical considerations, and the study limitations. The rationale for the design and analysis of this study were discussed throughout this chapter. Chapter 4 will present the results of the analysis and a discussion of those results.
Chapter 4: Research Analysis

This chapter presents the results of the document analysis performed on the policies delineating ownership of faculty-created course materials used in distance learning courses at public higher education institutions to answer the research question:

1. What is the differentiation of public university policies concerning ownership of course content of online classes developed by faculty?

The chapter begins with a description of the sample used for the study, followed by a presentation of the analysis of the policy retrieval for the study, including signature requirements of the policies. Next, there is a discussion of the analysis for each of the identified categories of the study, including charts used to demonstrate the findings for each category. Furthermore, the analysis of the categories includes an examination of the findings when they are disaggregated by sector (2-year vs. 4-year institutions). Finally, there is a chapter summary that provides a brief description of the study results.

Sample Profile

The population for this study was the set of public higher education institutions that are included in the Carnegie Classification of Institutions of Higher Education that offer distance education. The Carnegie Classification list contained 1644 public higher education institutions, of which 716 (43.55%) were classified at a level of 4 or more years and 928 (56.45%) were classified as at least 2 but less than 4 years. The sample drawn from the list contained 312 institutions, which included 130 (41.67%) that were classified at a level of 4 or more years and 182 (58.33%) that were classified as at least 2 but less than 4 years. In each case, the sample was within less than 2% of the target population, demonstrating a close fit with the population.
parameters and allowing for general extrapolation of the results of the study to the target population.

**Policy Retrieval**

The institutions included in the sample were derived from the Carnegie Classification spreadsheet using a randomization technique. The first 312 institutions that were identified through the randomization process were examined to determine whether they offered distance education, resulting in the removal of six institutions, which were replaced by the next six institutions in the randomization list. All six of the replacement institutions offered distance education, so the sample of 312 public higher education institutions that offer distance education was identified. Next, the sample institution’s websites were searched using both Google and the institution’s own search feature to identify any policies related to ownership of course material. These searches employed the terms intellectual property policy and copyright policy. In addition, searches for institutional policies, administrative policies, board policies, collective bargaining agreement, faculty handbook, employee handbook, student handbook, and college catalog were performed. Whenever it appeared that an institution was part of a larger system, a search of the college or university system was performed to locate system policies relative to the ownership of course material. In some cases, there were indications that a policy might exist, but access to the policy required an institution login, which the researcher did not possess. Those institutions were included in the list of institutions with no publicly available policy.

Next, a coding form (see Appendix B) was created based on the categories and expected responses to those categories that were determined through the review of literature (see Chapter 2). After an examination of the first 10% of the sample policies, the coding form was revised as there was some overlap found between categories and there were some responses to categories
that were not present in the initial form. The revised form was examined by a legal expert and was revised again based on the feedback received from the expert. Prior to beginning the coding procedure, the policies retrieved from each institution were examined to determine which policy or policies would be included in the coding process in cases where more than one policy was found for an institution. In cases where there was an institutional policy and a systems policy, only the institution’s policy was included, except in cases where the institution’s policy incorporated the system policy by reference. In the latter case, both policies were included in the coding process. In addition, for institutions with more than one institutional policy, the most relevant policy regarding ownership of course material was included in the coding process. In cases where there was more than one institutional policy that was relevant to the ownership question, all the relevant policies were examined. Some institutions had secondary policies with indications that those policies were meant to be read in conjunction with another policy. In those cases, both policies were included. For institutions with multiple policies, the policies were coded together as if they were one policy to provide an overview of the ownership designations at the institution.

For the next step of the coding process a second rater was utilized. The second rater was a student working on a master’s degree with no prior experience with intellectual property policies. The researcher met with the second coder and went through a training process that included an explanation of the coding document and how the coding should be performed. Then the researcher and the second coder encoded a random 10% of the sample data. The results were compared using Cronbach’s Alpha, which returned a value of .758. Next, the researcher encoded the same 10% after waiting three weeks and compared the results with the results of the researcher’s first round of coding. The resulting comparison yielded a Cronbach’s Alpha of .780.
In both cases, the Cronbach’s Alpha fell within the range described by Altman as being good. The results of both encodings were used to revise the coding document (see Appendix B) again, and then the final encoding was performed. For the final round of coding, the researcher encoded the entire sample, waited three weeks, then encoded the entire sample again. During this process, an additional category was added related to requirements for faculty to disclose the creation of intellectual property and assignment of ownership. The results for this category are included in the final comparison results, but were not included in the initial comparisons. The comparison of the overall results for the final round of coding yielded a Cronbach’s Alpha value of .907, which is considered very good based on Altman’s scale. In addition, the Cronbach’s Alpha value was computed for each coding category. In all cases except one, the alpha values ranged between .876 and .942, which is considered very good based on Altman’s scale. The one exception was for the category related to ownership of materials. The alpha value for this category was .780, which is considered good according to Altman, and is close to the cutoff to be considered very good at .80. Once both encodings were completed, the researcher and the second coder resolved any differences that were found between the researcher’s final two encodings through mutual agreement.

Next, a $6 \times 6$ factorial analysis of variance tested the effects of the six key components on the institutional policies retrieved for analysis. The results indicated that there were some significant effects for all but one of the key components; control of material. This finding was not surprising, considering that the majority of the institutions sampled, 194 (77.0%) out of 252, did not address control of material within their policies. Of the remaining key components, the analysis showed that there were significant effects for types of ownership ($F(10, 85) = 7.60, p < .001, \eta^2_p = .472$), financial considerations ($F(13, 85) = 3.15, p = .001, \eta^2_p = .325$), institutional
rationale for claims of ownership (F(11, 85) = 3.53, p < .001, $\eta^2_p = .314$), dispute resolution procedures (F(4, 85) = 3.68, p = .008, $\eta^2_p = .148$), and disclosure and assignment (F(4, 85) = 12.515, p < .001, $\eta^2_p = .371$). In addition, there was a significant interaction found between the two key components financial considerations and disclosure and assignment (F(2, 85) = 8.25, p = .001, $\eta^2_p = .163$).

**Policy retrieval results.** During the retrieval process, there were a total of 60 institutions (19.2% of the total sample of 312 institutions) found that did not have a publicly available policy that was retrievable from the institution’s website. Of the remaining 252 institutions, 120 (47.6%) delineated ownership through institutional policies, 11 (4.4%) of which specifically addressed course material ownership and/or distance education (DE) policies (see figure 3). There were 77 (30.6%) institutions that delineated ownership through collective bargaining agreements (CBAs) or employment contracts. The remaining 57 (22.6%) institutions had policies that were found in institutional board policies, college or university system policies, faculty handbooks, and student handbooks. Although there were only 2 (0.8%) institutions where the policies were found in student handbooks, there are some implications from this finding that will be discussed in Chapter 5.

In summary, these results demonstrate that ownership of faculty-created material is most likely addressed in institutional policies (120 [47.6%] of the 252 institutions studied) or collective bargaining agreements and employment contracts, 77 (30.6%) of the institutions studied. However, we also find that these policies can be found in a variety of locations, which may make it difficult for interested parties to locate them. One disturbing finding is that 60 (19.2%) of the original sample of 312 institutions did not have a policy that was publicly available on the institution’s website. This does not necessarily mean that those institutions do
not have a policy as there were indications during the retrieval process that some institutions had policies that could only be retrieved by an institutional member. However, there were institutions for which there were no indications that a policy existed on the institution’s website, which implies that some institutions may not have a policy addressing ownership of faculty-created material.

When the policy retrieval locations are disaggregated by sector (2-year vs. 4-year institutions) some interesting trends appear. The data show that 55 (30.2%) of the 182 institutions that were classified as 2-year institutions did not have a publicly available policy (see figure 4). On the other hand, we find that there were only five (3.8%) out of 130 institutions classified as 4-year institutions with no publicly available policy. Furthermore, the results demonstrate that 4-year institutions are more likely to employ institutional policies when designating ownership when compared to the 2-year institutions, 61 (46.9%) of the 130 four-year institutions compared to 48 (26.4%) of the 182 two-year institutions. There were also some slight differences between 2-year and 4-year institutions when examining the number of
institutions with institutional board policies in place to designate ownership, 6 (3.3\%) of the 2-year institutions vs. 12 (9.2\%) of the 4-year institutions, and the number that made use of system policies for ownership designations, 14 (7.7\%) of the 2-year institutions vs. seven (5.4\%) of the 4-year institutions.

To summarize, when examining the policy locations of 2-year and 4-year institutions, we find that 2-year institutions are less likely to have a publicly available policy than 4-year institutions (55 [30.2\%] of the 182 two-year institutions vs. 5 [3.8\%] of the 130 four-year institutions included in the original sample). In addition, for institutions that did have a publicly available policy we find that 4-year institutions are more likely to house their policy within their institutional policies when compared to 2-year institutions (61 [46.9\%] of the 125 four-year institutions compared to 48 [26.4\%] of the 127 two-year institutions studied).

**Administrator signature results.** When examining whether the policies studied were signed by an administrator, the results demonstrate that most policies do not contain an administrator’s signature. Out of the 252 policies examined, a total of 161 (63.9\%) of the
policies examined were not signed by an administrator (see figure 5). However, the results also show that the majority of signed policies were contained in collective bargaining agreements and/or employment contracts. Of the signed policies, 77 (30.6%) of the 252 institutions studied included an administrator’s signature within a collective bargaining agreement or employment contract, 9 (3.6%) were found within an institutional policy, and the remaining 5 (2.0%) were included within either a system policy or a faculty handbook.

When disaggregated by sector, the results are similar to the overall results, although we find that 2-year institutions have 3 cases for which administrator’s sign faculty handbooks, but no such cases appear for the 4-year institutions. Furthermore, 4-year institutions were less likely than 2-year institutions to have their ownership policy signed by an administrator. The results show that 85 (68.0%) out of 125 four-year institutions did not have their policy signed by an administrator, while 76 (59.8%) out of 127 two-year institutions did not have policies with administrator signatures (see figure 6). In both cases, administrator signatures were more likely to appear within collective bargaining agreements or employment contracts. However, 2-year institutions were more likely to include an administrator’s signature within their collective
Figure 6. Administrator signatures by sector. The figure shows the types of policies signed by administrators, disaggregated by sector. Of the 127 two-year institutions studied, 76 (59.8%) did not contain an administrator’s signature within their ownership policy, while 85 (68.0%) of the 125 four-year institutions had a policy without an administrator’s signature. Note: The numbers in parenthesis are percentages.

bargaining agreement or employment contract than 4-year institutions, 44 (34.6%) of the 127 two-year institutions studied compared to 33 (26.4%) of the 125 four-year institutions. On the other hand, 4-year institutions were more likely to include an administrator’s signature on their institutional policy than 2-year institutions, 6 (4.8%) of the 4-year institutions vs. 3 (2.4%) of the 2-year institutions.

In summary, most of the policies studied (161 [63.9%] out of 252) were not signed by an administrator. When examining the policies by sector, we find that both 4-year and 2-year institutions were unlikely to have their policies signed by an administrator (85 [68.0%] of the 4-year institutions and 76 [59.8%] of the 2-year institutions). In addition, the results demonstrate that institutions that do have an administrator sign their ownership policy are more likely to do so when the policies are included in the institution’s collective bargaining agreement or employment contract (77 [30.6%] of the 252 institutions studied), but 2-year institutions are more likely than 4-year institutions to utilize collective bargaining agreements or employment
contracts (44 [34.6%] of the 127 two-year institutions studied compared to 33 [26.4%] of the 125 four-year institutions).

**Faculty signature results.** When examining the policies that contained faculty signatures, we see similar results when compared to the results for administrators. There are three fewer faculty signatures found on institutional policies and one fewer on system policies when compared to the results for administrator signatures. Therefore, there were 165 (65.5%) policies without faculty signatures out of the 252 policies studied (see figure 7). This is consistent with the previous finding that most institution’s ownership policies did not contain an administrator’s signature. Overall, the results show that faculty are more likely to sign a collective bargaining agreement or employment contract. In short, of the policies that contained faculty signatures, 77 (30.6%) of those were contained within collective bargaining agreements or employment contracts. The remaining 10 (11.5%) policies with faculty signatures were found within institutional policies, system policies, and faculty handbooks.

The disaggregated results show that the majority of 2-year and 4-year institutions did not contain a faculty or faculty representative’s signature within their ownership policies, 77 (60.6%) of the 127 two-year institutions and 88 (70.4%) of the 125 four-year institutions. In addition,

![Figure 7. Faculty signatures. The figure shows the types of policies that were signed by faculty (or faculty representatives). Out of 252 institutions studied, 165 (65.5%) did not contain a faculty or faculty representative’s signature. Note: The numbers in parenthesis are percentages.](image-url)
we are more likely to find faculty signatures contained within a collective bargaining agreement or employment contract in both cases, 44 (34.6%) of 2-year institutions and 33 (26.4%) of 4-year institutions. Furthermore, we find that three (2.4%) of the 2-year institutions require faculty signatures on their faculty handbook, while none of the 4-year institutions demonstrated this requirement (see figure 8). On the other hand, there was one (0.8%) four-year institution that included a faculty signature on their system policy, but none of the two-year institutions included this requirement. One troubling result found during the encoding process was related to one 4-year institution that required a signature showing agreement to abide by the institutional policy on its employment application (this is included within the institutional policy results).

In summary, the majority of policies studied did not include a faculty or faculty representative’s signature within their ownership policy (165 [65.5%] of the 252 institutions studied). We see a similar result when the results are disaggregated by sector. Out of the 127 two-year institutions studied, 77 (60.6%) did not contain a faculty member’s signature within their ownership policy, while 88 (70.4%) out of 125 of the four-year institutions studied did not. This demonstrates that 2-year institutions are more likely to require a faculty signature on their

Figure 8. Faculty signatures by sector. The figure shows the types of policies signed by faculty (or faculty representatives), disaggregated by sector. Of the 127 two-year institutions studied, 77 (60.6%) did not contain a faculty or faculty representative’s signature within their ownership policy, while 88 (70.4%) of the 125 four-year institutions had a policy without a faculty or faculty representative’s signature. Note: The numbers in parenthesis are percentages.
ownership policy than 4-year institutions. Furthermore, when we find that the institution’s
ownership policy does include a faculty or faculty representative’s signature, it is most likely
found within a collective bargaining agreement or employment contract (7 [30.6%] of the 252
institutions studied, 44 [34.6%] of the 127 two-year institutions studied, and 33 [26.4%] of the
125 four-year institutions studied).

Types of Ownership Results

The overall results show that of the 252 institutions studied, 239 (94.8%) of them claim
ownership of at least some faculty material. It is important to note that these ownership policies
could include provisions for multiple types of ownership, so the categories are not all mutually
exclusive. The institutional ownership category has been disaggregated according to whether the
institution’s policy provided certain exceptions to institutional ownership and type of exception,
and those categories are mutually exclusive. In other words, the institution’s provisions for
ownership could potentially include provisions for faculty ownership, joint ownership, and one

Figure 9. Comparison of types of ownership claims. Institutional ownership is disaggregated according to whether there are exceptions to the claims of institutional ownership and the type of exception provided. Note: The numbers in parenthesis are percentages.
of the categories for institutional ownership. The results show that 212 (84.1%) of the 252 institutions studied allow for faculty ownership of at least some faculty material (see figure 9). In addition, 112 institutions (44.4%) provide the possibility of joint ownership. When examining the categories that cover institutional ownership, we find that 90 (35.7%) institutions claim ownership without any exceptions, 36 (14.3%) provide exceptions for scholarly material, 12 (4.8%) provide exceptions for course material, and 101 (40.1%) provide exceptions for both scholarly material and course material.

For the purposes of this study, scholarly material included material typically created by faculty for publication in journals and similar media for the purpose of sharing intellectual ideas related to the faculty member’s research pursuits. In the case of course material, this study included material typically created by faculty to support their teaching requirements, including material that was created for use in face-to-face, hybrid, and distance education courses. When examining the policies to determine whether they included any exceptions, there were some cases where the institutions excepted traditional academic material, without defining what that meant. In those cases, the researcher took the conservative route of defining that to include only scholarly material, but the institution may have intended to include course material as well. In most cases, the institutions provided definitions or examples to show which material was being included in the exception.

When the results are disaggregated by sector, we find that there are some differences between 2-year and 4-year institutions and the types of ownership provided. The most notable difference is within the types of institutional ownership. It appears that 2-year institutions are more likely to claim ownership with no exceptions, while 4-year institutions are more likely to claim institutional ownership, but with exceptions for faculty ownership of scholarly and/or
Institutional ownership is disaggregated according to whether there are exceptions to the claims of institutional ownership and the type of exception provided.

Note: The numbers in parenthesis are percentages.

course materials. Specifically, 65 (51.2%) of the 127 two-year institutions studied claimed ownership without any exceptions, while 25 (20.0%) of the 125 four-year institutions made that claim (see figure 10). On the other hand, 94 (75.2%) of the 4-year institutions provided exceptions for scholarly material, course material, or both, while only 55 (43.3%) of the 2-year institutions provided these exceptions. The results also show that 4-year institutions are more likely to specify faculty ownership of at least some faculty work, when compared to 2-year institutions (117 [93.6%] of the 125 four-year institutions vs. 95 [74.8%] of the 127 two-year institutions).

In summary, the results of the study show that most institutions lay claim to at least some faculty work (239 [94.8%] of the 252 institutions studied), although the majority also allow for faculty ownership of some material (212 [84.1%] institutions). There were also a significant number that provided the possibility of joint ownership (112 [44.4%] institutions).
examining the results by sector, we find that 2-year institutions are more likely to assert an ownership claim that does not provide any specific exceptions for faculty ownership when compared to 4-year institutions (65 [51.2%] of the 127 two-year institutions studied vs. 25 [20.0%] of the 125 four-year institutions studied). Also, we find that 4-year institutions are more willing to provide exceptions to scholarly material, course material, or both, than 2-year institutions are (94 [75.2%] of the 4-year institutions compared to 55 [43.3%] of the 2-year institutions). Furthermore, 4-year institutions were more likely than 2-year institutions to designate faculty ownership of at least some material (117 [93.6%] of the 125 four-year institutions vs. 95 [74.8%] of the 127 two-year institutions).

**Financial Considerations Results**

As noted in Chapter 1, “In an employment setting, the term “work product” refers to anything created by an employee that becomes property of the employer under certain conditions” (Work Product Disputes, n.d., para. 1); this is the definition used throughout this discussion when describing the results of work created by faculty within the parameters of their job requirements. The results of the study show that 36 (14.3%) of the 252 institutions studied did not include financial considerations within their policies. Furthermore, we find that most of the institutions studied, 152 (60.3%) out of 252, do allow for revenue to be shared by faculty and the institution (see figure II). It is important to note, however, that this isn’t necessarily guaranteed for all faculty work product within those institutions, but something that may be considered by some institutions. Other institutions do commit to sharing revenue from faculty work product, if there is a profit earned from that work. Another interesting result that emerged was that of granting licenses. Faculty are much more likely to be required to provide a license to their institution, 109 (43.3%) out of 252 institutions studied, than institutions will provide to
The study results demonstrate that some institutions that claim ownership of faculty work provide remuneration for the work product. Specifically, 85 (33.7%) of the 252 institutions studied provided some form of payment for the creation of faculty work (see Figure 11). However, the form of remuneration varied between institutions. Some institutions provided monetary payments or stipends for faculty work, while others stipulated a reduction in course load to support creation of the work, then claimed ownership of the output. One area of interest was the finding that four of the 85 institutions provided financial remuneration for creation of the faculty, 37 (14.7%) out of 252. The licensing schemes found within the policies themselves do vary, but the most commonly encountered scenario was for a non-exclusive, royalty-free license, with variations on how long the license is in effect. Some institutions designate a time limit for the license, while others provide for a perpetual license.

Figure 11. Comparison of the results for financial considerations. Note: The numbers in parenthesis are percentages.
work, then allowed faculty to claim ownership of the output. Another interesting result is the finding that 56 (22.2%) of the 252 institutions studied allow faculty ownership of material created using institutional resources, but required the faculty member to reimburse the institution for the resources used.

Other considerations demonstrated by the results are those related to faculty profiting from the sale and/or use of faculty-created material. There were six (2.4%) institutions that barred faculty from profiting from the sale of faculty-created material, and three (1.2%) that required an administrator’s approval before faculty-created material could be sold through the institution’s book store (see figure 11). In addition, four (1.6%) institutions barred faculty from charging the institution or the students for use of faculty-created material used to support the faculty member’s teaching assignment. There were indications that some institutions are concerned about faculty using material created and owned by them to teach at a competing institution. Specifically, 11 (4.4%) institutions included a non-compete clause in their policies.

When the results are disaggregated by sector, there are some notable differences found within the results. For instance, we find that 4-year institutions are more likely to share revenue with faculty, with 91 (72.8%) out of 125 four-year institutions incorporating the potential for shared revenue within their policies as opposed to 61 (48.0%) out of 127 two-year institutions including this provision (see figure 12). In addition, we find that four (3.1%) of the 2-year institutions are willing to pay faculty to create work, then allow faculty to retain ownership, while none of the 4-year institutions provided a similar scheme. It also appears that 2-year institutions are less likely to address financial considerations within their policies. Specifically, 23 (18.1%) of the 2-year institutions did not address financial considerations, but only 13
(10.4%) of the 4-year institutions failed to include some provisions for financial considerations within their policies.

In summary, the results demonstrate that most institutions included provisions within their policies for potential profit-sharing (152 [60.3%] out of 252), but 4-year institutions are more likely to include this provision than 2-year institutions (91 [72.8%] out of 125 four-year institutions compared to 61 [48.0%] out of 127 two-year institutions). In addition, we find that 109 (43.3%) of the 252 institutions studied require faculty to provide a license to the institution for work product that faculty owns, but only 37 (14.7%) included provisions for the institution to provide a license to faculty for faculty work product owned by the institution. The study also
found that 85 (33.7%) of the 252 institutions studied provided remuneration for the creation of faculty work, with 4 (3.1%) of the 127 two-year institutions providing faculty ownership of the work product that they received payment for. In addition, 56 (22.2%) of the 252 institutions studied allow faculty ownership of material created using institutional resources, but required the faculty member to reimburse the institution for the resources used. Finally, the study determined that 36 (14.3%) of the 252 institutions studied did not include financial considerations within their policies. In addition, 2-year institutions were less likely to include financial considerations within their policies than 4-year institutions were (23 [18.1%] of the 127 two-year institutions studied compared to 13 [10.4%] of the 125 four-year institutions).

**Control of Material Results**

The main finding for this category is that most of the institutions sampled, 194 (77.0%) out of 252, did not address control of faculty work product. This result is left out of the accompanying charts to allow for readability of the remaining responses. Of the remaining institutions, the most significant finding relates to situations where the institution owns the material, but allows faculty to revise the material. Specifically, 30 (11.9%) of the institutions studied stipulated that faculty could revise work product owned by the institution (see figure 13). In addition, 13 (5.2%) of the institutions studied allowed faculty to choose whether they wanted their name associated with material they had created, and seven (2.8%) institutions claimed the option of choosing if they wanted their name associated with faculty work product. Other considerations related to control of material included the requirement that faculty approval was required before reuse or rebroadcast of material (6 [2.4%] of the institutions studied), and the right of first-refusal for the faculty member creating a distance education course (12 [4.8%] institutions).
Figure 13. Comparison of the results for control of faculty work product. Of the 252 institutions studied, 194 (78.0%) did not address control within their ownership policies. Note: The numbers in parenthesis are percentages.

An examination of the data by sector reveals that 2-year institutions are less likely to address control of faculty work product, when compared to 4-year institutions. The results show that 101 (79.5%) of the 127 two-year institutions did not include provisions related to control of material, while 93 (74.4%) of the 125 four-year institutions failed to address control within their policies (see figure 14). The results also show that 4-year institutions are more likely to allow faculty revision of material owned by the institution, with 19 (15.2%) of the 4-year institutions including this provision, but only 11 (8.7%) of the 2-year institutions included it. We also find that 4-year institutions were more likely than 2-year institutions to allow faculty to choose whether they want their name associated with faculty work product (9 [7.2%] four-year institutions vs. 4 [3.1%] two-year institutions).
Figure 14. Comparison of the results for control of faculty work product by sector. Of the 127 two-year institutions studied, 101 (79.5%) did not address control within their ownership policies. Of the 125 four-year institutions studied, 93 (74.4%) did not address control within their ownership policies. Note: The numbers in parenthesis are percentages.

To summarize, the major finding was that most institutions, 194 (77.0%) out of 252, did not include stipulations within their ownership policies related to control of faculty work product. We also find that 2-year institutions are less likely than 4-year institutions to include these provisions (101 [79.5%] of the 127 two-year institutions compared to 93 [74.4%] of the 125 four-year institutions). When we find that control of faculty work product is addressed within the ownership policies studied, usually the concerns addressed relate to revision of the material and use of names. Specifically, there were 30 (11.9%) institutions that allowed for faculty revision, but we find that 4-year institutions are more likely to include this provision than
2-year institutions (19 [15.2%] of the 4-year institutions vs. 11 [8.7%] of the 2-year institutions). Furthermore, 13 (5.2%) of the institutions studied allowed faculty to choose whether they wanted their name associated with their work product, but 4-year institutions were more likely to include this provision than 2-year institutions (9 [7.2%] four-year institutions compared to 4 [3.1%] two-year institutions).

**Institutional Rationale for Claims of Ownership Results**

There were several significant results found when investigating the rationale behind institutional claims of ownership. The first two are based on the U.S. Copyright Law which provides ownership to employers when employees create material within the scope of their employment and when an employee is working within a contractual obligation. Notably, 212 (84.1%) of the 252 institutions studied claim ownership based on contracts, 179 (71.0%) claim ownership when employees are working within the scope of their employment, and 148 (58.7%) base their ownership claim on whether a substantial use of institutional resources were used in the creation of material (see figure 15). It is important to note that some institutions provided multiple rationales for their underlying ownership claims. Also, some institutions claiming ownership based on scope of employment indicated that this would only happen if the faculty employee is assigned a specific duty for which the institution would subsequently claim ownership. In addition, institutions varied in their descriptions of significant resources. The definitions for significant resources ran the gamut from institutions that set a monetary threshold on the resources to others that simply stated that significant resources were those that went beyond what is customarily provided to faculty, such as office space, computers, and use of office equipment and support personnel. Still others did not define what they meant by significant resources. For the purposes of coding, the researcher placed an institution’s policy
into this category if it stated specifically that it was basing ownership on significant or substantial use of resources, whether there was a definition of this term or not, or whenever ownership was claimed based on use of resources beyond what was customarily provided or greater. One unexpected result was the finding that 34 (13.5%) institutions base their ownership claims on the use of any institutional resources in the creation of material. One clear result is that the majority of institutions make a claim to at least some of the material created by faculty; there were only 8 (3.2%) institutions in the study that made no type of ownership claim to faculty work product.

There were several other rationales provided that included whether the material was created over time by many people (9 [3.6%] institutions), if the material becomes part of the institution’s literature or policies (11 [4.4%] institutions), and some institutions simply stated that ownership would be delineated based on the applicable laws regarding ownership (5 [2.0%] institutions). Three (1.2%) of the sample institutions did not provide a rationale for their claim.
of ownership, although they did indicate within their policies that they were claiming ownership of at least some faculty work product.

When the results are viewed by sector, we find that 4-year institutions are more likely to employ contracts to designate ownership of material, and they are also more likely to base their claims of ownership on substantial use of resources when compared to 2-year institutions. Specifically, 113 (90.4%) of the 125 four-year institutions based their claims of ownership on a contractual agreement, but only 99 (78.0%) of the 127 two-year institutions relied on this rationale (see figure 16). In addition, 85 (68.0%) of the 4-year institutions based their claims of ownership on substantial use of resources, with only 63 (49.6%) of the 2-year institutions basing their claims on this rationale. However, 2-year institutions are more likely to base their claims of

![Figure 16. Comparison of institutional rationales for claims of ownership by sector. Note: The numbers in parenthesis are percentages.](image-url)
ownership on use of any institutional resources than 4-year institutions (24 [18.9%] two-year institutions vs. 10 [8.0%] four-year institutions), and 2-year institutions account for all three (2.4% of 2-year institutions) of the findings for institutions that failed to provide a rationale for their claim of ownership.

To summarize, when providing the rationale behind their claims of ownership, most of the institutions studied based their claims of ownership on contracts (212 [84.1%] of the 252 institutions studied), work done within the scope of employment (179 [71.0%] of the institutions studied), and substantial use of institutional resources (148 [58.7%] institutions). Another significant finding was that there were only 8 (3.2%) institutions that did not lay claim to any faculty work product. In addition, there were 34 (13.5%) institutions that based their ownership claims on the use of any institutional resources in the creation of material. When examining the results by sector, we find that 4-year institutions are more likely to base their claims of ownership on a contractual agreement (113 [90.4%] of the 125 four-year institutions studied vs. 99 [78.0%] of the 125 two-year institutions studied) and/or significant use of institutional resources than 2-year institutions were (85 [68.0%] four-year institutions vs. 63 [49.6%] two-year institutions). However, 2-year institutions were more likely to base their claims of ownership on use of any institutional resources than 4-year institutions (24 [18.9%] two-year institutions vs. 10 [8.0%] four-year institutions).

**Dispute Resolution Results**

When viewing the results for dispute resolutions, we find that 97 (38.5%) of the 252 institutions studied do not outline a dispute process in their policies (see figure 17). Seventy-three (29.0%) institutions designate a process in which the institution makes the final decision
for any disputes regarding ownership, with the results disaggregated by whether the process is a single-step or multi-stage process. Many of these institutions outlined a process in which there is an institutional panel made up of multiple stakeholders within the institution to hear disputes, but these panels only provided recommendations to the institutional representative charged with making the decision. Seventy-two (28.6%) of the institutions studied incorporated a dispute process in which an independent agent decides the outcome, which is also disaggregated by whether the process is a one-step or multi-stage process. There were 10 (4.0%) institutions that followed a joint resolution process, but two of these institutions indicate that the institution will decide in the case of a tie.

After reviewing the results by sector, we find that 2-year institutions are more likely to incorporate a dispute process in which an independent agent decides the outcome when compared to 4-year institutions. Specifically, 43 (33.9%) of the 127 two-year institutions
indicate that their disputes will be decided by an independent agent, while only 29 (23.2%) of the 125 four-year institutions included this provision in their policies (see Figure 18). In addition, the results demonstrate that 4-year institutions are more likely to employ a process in which the institution decides the outcome (42 [33.6%] of the 4-year institutions compared to 31 [24.4%] of the 2-year institutions) but these institutions are also more likely to outline a joint process for dispute resolutions when compared to the outcomes for 2-year institutions (8 [6.4%] four-year institutions vs. 2 [1.2%] two-year institutions).

To summarize, a significant number of the institutions (97 [38.5%] out of 252) studied did not include a dispute resolution process within their ownership policies. Furthermore, 73 (29.0%) institutions included a process in which the institution would decide the outcome of the dispute process. When viewing the results by sector, we find that 4-year institutions are more likely to employ a process in which the institution decides the outcome than 2-year institutions.

Figure 18. Comparison of dispute resolution results by sector. Note: The numbers in parenthesis are percentages.
are (42 [33.6%] of the 125 four-year institutions compared to 31 [24.4%] of the 127 two-year institutions). The study also determined that 72 (28.6%) institutions overall incorporated a dispute process in which an independent agent decides the outcome, but 2-year institutions were more likely than 4-year institutions to include this provision in their policies (43 [33.9] of the two-year institutions compared to 29 [23.2%] of the four-year institutions).

**Disclosure and Assignment Results**

Of the 252 institutions studied, 158 (62.7%) did not include disclosure or assignment of title requirements in their policies (see figure 19). Of the remaining institutions, 71 (28.2%) required faculty to disclose the creation of intellectual property. Fifty-three (21.0%) institutions required faculty to execute a document either disclaiming ownership of the material, or assigning title to the institution. Fourteen (5.6%) institutions indicated that they would execute an assignment of title for material that the institution indicated through their policy would belong to faculty, but faculty were typically required to request the assignment document.

![Figure 19](image-url)

*Figure 19. Disclosure and assignment of title results. Note: The numbers in parenthesis are percentages.*
When the results are disaggregated by sector, we find that 2-year institutions are less likely to include disclosure or assignment requirements within their ownership policies when compared to 4-year institutions. Specifically, 97 (76.4%) of the 127 two-year institutions did not include these requirements, while there were only 61 (48.8%) of the 125 four-year institutions that failed to include them (see figure 20). Moreover, 4-year institutions are more likely than 2-year institutions to include requirements related to faculty disclosure of intellectual property (43 [34.4%] of the 4-year institutions compared to 28 [22.0%] of the 2-year institutions), requirements for faculty to disclaim or assign ownership of faculty work product (42 [33.6%] of the 4-year institutions vs. 11 [8.7%] of the 2-year institutions), and provisions for institutions to assign ownership of faculty work product to the faculty creator (13 [10.4%] of the 4-year institutions compared to one [0.8%] of the 2-year institutions).

To summarize, we find that most institutions, 158 (62.7%) of the 252 institutions studied, do not include provisions for disclosure of intellectual property or assignment of rights. When we examine the results by sector, it is clear that 4-year institutions are driving the development of this category. There were 97 (76.4%) out of 127 two-year institutions that failed to include

![Figure 20. Disclosure and assignment of title results by sector. Note: The numbers in parenthesis are percentages.](image-url)
disclosure or assignment requirements in their policies, but only 61 (48.8%) out of 125 four-year institutions left these provisions out of their policies. Although there were some institutions (14 [5.6%] institutions overall) that indicated they were willing to execute an assignment document for faculty work product that the institution designated would be owned by faculty, the obvious concern is for faculty disclosure of intellectual property (71 [28.6%] institutions) and the subsequent assignment of rights by faculty to the institution (53 [21.0%] institutions). When the results are disaggregated by sector, we find again that 4-year institutions appear to be the impetus for these requirements, with 43 (34.4%) of the 125 four-year institutions requiring faculty disclosure of intellectual property, and 42 (33.6%) requiring faculty to disclaim or assign ownership rights to the institution for faculty work product claimed by the institution.

**Summary**

This chapter presented the findings of the document analysis performed on the publicly available policies delineating ownership of faculty work product in public higher education institutions that provide distance education. The results showed that there are some noteworthy differences within public higher education institutions when it comes to the content of the policies that designate ownership of faculty-created material. Furthermore, the data demonstrated that there were some significant trends that emerged when comparing the content of policies at 2-year institutions and 4-year institutions. When retrieving the ownership policies, the researcher found that most of the 312 institutions sampled house these policies either within their institutional policies, 120 (47.6%) institutions, or within collective bargaining agreements or employment contracts, 77 (30.6%) institutions, (see figure 3). However, when the data is disaggregated by sector, we find that 4-year institutions are more likely than 2-year institutions to house their ownership policies within their institutional policies (61 [46.9%] of the 130 four-year
institutions sampled compared to 48 [26.4%] of the 182 two-year institutions) (see figure 4). The data also showed that 60 (19.2%) of the institutions sampled did not have a publicly available policy on their websites (see figure 3). Furthermore, there were significant differences related to policy retrieval between 2-year and 4-year institutions. When examining the results by sector, we find that 2-year institutions were far less likely than 4-year institutions to have a publicly available policy on their website (55 [30.2%] of the 2-year institutions vs. 5 [3.8%] of the 4-year institutions) (see figure 4).

Once the policies were retrieved, the presence of administrator and/or faculty signatures were recorded. The results show that most of the 252 institutions studied do not require an administrator’s signature (161 [63.9%] institutions) or a faculty member’s signature (165 [65.5%] institutions) within their ownership policies. Yet, we again find differences between the findings for 2-year and 4-year institutions. When examining the policies for the presence of administrator and/or faculty signatures, 4-year institutions were less likely to have signatures included on their policies in both cases. In short, of the 125 four-year institutions studied, 85 (68.0%) did not include administrator signatures on their policies and 88 (70.4%) did not include faculty signatures. By comparison, of the 127 two-year institutions studied, 76 (59.8%) failed to include administrator signatures on their policies, whereas there were 77 (60.6%) policies without faculty signatures. When examining the policies, we find that when policies are signed by either an administrator or a faculty member (or their representative) that those signatures are typically found within a collective bargaining agreement or employment contract. In the case of administrator signatures, 77 (30.6%) of the policies sampled containing administrator signatures within a collective bargaining agreement or employment contract (see figure 5). Similarly, we
find that 77 (30.6%) of the policies studied that were signed by faculty had signatures contained within a collective bargaining agreement or employment contract (see figure 7).

The results related to types of ownership claims provided within the institutional policies designating ownership revealed some significant trends. Overall, 239 (94.8%) of the 252 institutions studied claimed some type of ownership of at least some faculty work product (see figure 9). When these results are disaggregated by exception, we find that 90 (35.7%) of the institutions claimed ownership of faculty work without any exceptions, while 149 (59.2%) provided exceptions for scholarly material, course material, or both. When the results are compared between 2-year institutions and 4-year institutions, we find that 2-year institutions were more likely to claim ownership without providing any exceptions (65 [51.2%] of the 127 two-year institutions studied vs. 25 [20.0%] of the 125 four-year institutions) (see figure 10). Conversely, 4-year institutions are more likely to claim ownership while providing exceptions for scholarly material, course material, or both, than 2-year institutions are (94 [75.2%] four-year institutions compared to 55 [43.3%] two-year institutions). The data also show that 212 (84.1%) of the 252 institutions studied did provide for faculty ownership in some cases. When the results are disaggregated by sector, we find that 4-year institutions are much more likely to provide for faculty ownership of at least some material than 2-year institutions are (117 [93.6%] of the 4-year institutions compared to 95 [74.8%] of the 2-year institutions). One additional finding regarding types of ownership relates to joint ownership. Specifically, the results show that 112 (44.4%) of the institutions studied included the possibility of joint ownership.

When examining the results related to financial considerations, the data show that 152 (60.3%) of the 252 institutions studied included the possibility of revenue sharing between the institution and the faculty creator (see figure 11). However, when the results are viewed by
sector, we find that 4-year institutions are more likely than 2-year institutions to include revenue sharing within their ownership policies (91 [72.8%] of the 125 four-year institutions vs. 61 [48.0%] of the 127 two-year institutions) (see figure 12). Another important finding was the requirement that faculty provide a license to the institution for work owned by the faculty (109 [43.3%] of the 252 institutions studied). In addition, 85 (33.7%) of the institutions provided some type of financial remuneration to the faculty creator of material, with most of these institutions subsequently claiming ownership of the work product. Also, 56 (22.2%) of the institutions studied required faculty to reimburse the institution for resources used, but the faculty would then own the material created using those resources. When examining the results related to control of faculty work product, the most significant finding was that 194 (77.0%) of the institutions studied did not address control within their ownership policies.

When analyzing the underlying rationales for claims of ownership included within the policies delineating ownership, there were three main themes that emerged. Overall, 212 (84.1%) of the 252 institutions studied based their ownership claims on contracts, 179 (71.0%) based their claims on employees working within the scope of their employment, and 148 (58.7%) based their claims on use of substantial institutional resources (see figure 15). In addition, there were 34 (13.5%) that based their claims of ownership on the use of any institutional resources. When the results are examined by sector, we find that 4-year institutions were more likely than 2-year institutions to base their claims on a contractual relationship (113 [90.4%] of the 125 four-year institutions studied compared to 90 [78.0%] of the 127 two-year institutions) and 4-year institutions were also more likely to base their claims on substantial use of institutional resources than 2-year institutions were (85 [68.0%] four-year institutions vs. 63 [49.6%] two-year institutions) (see figure 16). However, 2-year institutions were more likely than 4-year
institutions to base their claim on the use of any institutional resources (24 [18.9\%] of the 2-year institutions compared to 10 [8.0\%] of the 4-year institutions).

The results related to dispute resolution processes demonstrate that 97 (38.5\%) of the 252 institutions studied did not include a dispute process within their ownership policies (see figure 17). Of those that did include a dispute process, 73 (29.0\%) specified that the institution would make the final decision, while 72 (28.6\%) allowed for an independent agent to make the final decision. When reviewing the results by sector, we find that 4-year institutions were more likely than 2-year institutions to specify that the institution would make the final decision (42 [33.6\%] of the 125 four-year institutions compared to 31 [24.4\%] of the 127 two-year institutions) (see figure 18). On the other hand, 2-year institutions were more likely than 4-year institutions to designate that an independent agent would decide the final outcome of the dispute (43 [33.9\%] of the 2-year institutions vs. 29 [23.2\%] of the 4-year institutions).

When examining the results related to disclosure and assignment of rights, we find that most of the 252 institutions studied (158 [62.7\%] institutions) do not include these provisions within their ownership policies (see figure 19). Furthermore, the data show that 71 (28.2\%) require faculty to disclose the creation of intellectual property and 53 (21.0\%) require faculty to either disclaim ownership of assign title of faculty work product to the institution. When the results are disaggregated by sector, we find that 2-year institutions were less likely than 4-year institutions to include these provisions within their policies (97 [76.4\%] of the 127 two-year institutions studied as compared to 61 [48.8\%] of the 125 four-year institutions) (see figure 20). Moreover, 4-year institution were more likely to include requirements for faculty to disclose the creation of intellectual property (43 [34.4\%] of the 4-year institutions vs. 28 [22.0\%] of the 2-year institutions), and they were also more likely to include requirements for faculty to disclaim
ownership or assign title of faculty work product to the institution (42 [33.6%] four-year institutions compared to 11 [8.7%] two-year institutions).

As we have seen, the results of the study have uncovered some significant trends within the ownership policies of public higher education institutions related to types of ownership, financial considerations, control of faculty work product, the underlying rationale provided by institutions when claiming ownership of faculty work product, dispute resolution procedures, and disclosure and assignment of rights. We have also observed that there were some notable differences identified when comparing the policies of 4-year institutions and 2-year institutions; the implications of these findings will be discussed in chapter 5.
Chapter 5: Conclusion of Study and Recommendations

This chapter provides an overview of previous chapters, a presentation of the research findings, and a discussion of those findings. Next, there is a discussion of policy recommendations, followed by recommendations for future research. Finally, the chapter closes with a summary of what was learned. The purpose of this study is to establish the key components of policies that designate ownership of course materials used in distance education and learn how they differ within public higher education institutions.

Overview of Previous Chapters

Chapter 1 began with a discussion of the growth of distance education in higher education and the subsequent increase in policies designating ownership of faculty-created distance education course material, thus providing the initial foundation for this study. This chapter also described the underlying problem that has developed as faculty have resisted participating in distance education because of the ambiguity surrounding the ownership question, which can negatively impact the successful implementation of an institution’s distance education program. In addition, the research question was introduced in chapter 1, followed by an explanation of why the target population was narrowed down to public higher education institutions that offer distance education. The chapter ended with definitions used throughout this study and an overview of the remaining chapters.

Chapter 2 began with an overview of the evolution of distance education, from its initial implementation through correspondence courses, its subsequent delivery through radio and television broadcasts, and its current format, online course delivery, which was made possible through the development of the Internet and the availability of computers to the general public. Next, there was a discussion of the U.S. Copyright Law and its development, including changes
that affected ownership of copyrightable material and use of copyright-protected material in higher education institutions. This was followed by an examination of the creation and development of the teacher exception to the U.S. Copyright Law, and included a discussion of some of the issues surrounding the teacher exception. Chapter 2 also provided an overview of the conflicting recommendations by various educational organizations regarding the ownership question, followed by an outline of the concerns that faculty have because of the ambiguity surrounding the ownership question. The development of distance education, changes in the U.S. Copyright Law, and the ambiguity surrounding the existence of the teacher exception have all contributed to the subsequent discord between institutions and their faculty, as demonstrated by the conflicting recommendation by leading educational organizations. Past research on institutional policies that cover ownership of intellectual property were examined and demonstrated that there is very little research in this area, which is unfortunate considering the negative effect that these policies may have on faculty motivation to participate in distance education. The chapter ended with a summary of what was learned from the literature review.

The third chapter described the methodology used to analyze the policies delineating ownership of faculty work product in public higher education institutions. The chapter began with a restatement of the study purpose and research question, followed by a rationalization for the selection of document analysis to answer the research question for this study. The selection of research methodology is especially important as it should align with the conceptual framework of the study and the research question (Schilling, 2006). For this study, document analysis was chosen because it facilitates “impartial and dependable analysis of written policies” (Le Gouais & Wach, 2013, p. 441), which aligns well with the research question:
3. What is the differentiation of public university policies concerning ownership of course content of online classes developed by faculty?

Chapter 3 also provided a description of the document analysis research design, a discussion of ethical considerations, the researcher’s background and potential bias, and an examination of limitations of the study.

The fourth chapter began with a description of the sample used for the study, which consisted of a probability sample generated through random sampling procedures. This was followed by a detailed description of the policy retrieval process and the results of that process. Next, an overview of the analysis process was provided, followed by the findings for each of the identified categories, including charts used to demonstrate the findings for each category.

Furthermore, the analysis of the categories includes an examination of the findings when they are disaggregated by sector (2-year vs. 4-year institutions). The results of the study demonstrated that many institutions seem to believe that the teacher exception to the U.S. Copyright Law no longer applies. Indeed, recent court cases have shown that the courts look to the institution’s intellectual property policy when deciding questions of ownership. Furthermore, some courts have ruled that the policies need to be signed by both the institution and the faculty in order to be enforceable. The study demonstrated that some institutions have made note of this requirement and they have begun to require faculty to assign title to the institution for material that the policy designates as institution owned. The results also demonstrate that most institutions (239 [94.8%] of the 252 institutions studied) claim ownership of at least some faculty work. The underlying rationale for these claims of ownership tend to fall into three major categories: ownership based on contracts, ownership based on the U.S. Copyright Law’s definition of employees working within the scope of their employment, and substantial use of institutional resources. The results
also showed that institutions have begun to base their claims of ownership on the use of any institutional resources (34 [13.5%] of the institutions studied).

**Research Findings**

The document analysis began with a predetermined set of categories and one additional category was added during the coding process, culminating in the final set of categories: (a) types of ownership; (b) financial considerations, such as payment for content creation or reimbursement for resources used; (c) control of faculty-created content; (d) underlying rationale for claiming ownership of content; (e) settlement of disputes; and (f) disclosure and assignment of rights. In addition to these categories, the coding document tracked the location from which the policy was retrieved, whether administrators and/or faculty signed the policy, and the type of policy where signatures were found. There were 312 institutions included in the sample of public higher education institutions that offered distance education. Of these, there were 60 (19.2%) for which a publicly available policy was not found through a search of the institution’s website. It is important to note that this does not necessarily mean that none of these institutions have a policy delineating ownership of faculty-created distance education course material, it simply means that a policy could not be located or accessed on the institution’s website.

The analysis showed that the key components of the ownership policies relate to the six categories listed above that were found through the literature review and the document analysis. It is important to note that five of the six categories allowed for multiple selections for each category. The exception to this was the category related to settlement of disputes, which only permitted one selection for each of the institutions studied. Of the six identified categories, the major components that were addressed across institutions related to types of ownership and the underlying rationale for institutions to claim ownership of faculty-created materials. Most of the
institutions studied claimed ownership of at least some faculty material, with 239 (94.8%) out of the 252 institutions, claiming some type of institutional ownership. Moreover, the majority of institutions provided faculty ownership for at least some material (212 [84.1%] of the institutions studied). When the results were viewed by sector, it emerged that 4-year institutions were more likely to provide exceptions to institutional ownership for scholarly material and/or course materials. Of the 125 four-year institutions, 94 (75.2%) of them indicate an exception to institutional ownership compared to 55 (43.3%) of the 127 two-year institutions. Furthermore, 4-year institutions were more inclined to provide some type of faculty ownership than 2-year institutions, with 117 (93.6%) indicating some type of faculty ownership compared to 95 (74.8%) of the 2-year institutions.

When providing rationales for their claims of ownership, many of the institutions based their claims on the use of contracts (212 [84.1%] of the 252 institutions studied), employees creating work within the scope of their employment (179 [71.0%] of the institutions studied), or substantial use of institutional resources (148 [58.7%] institutions). One rationale that emerged during the analysis was the finding that 34 of the institutions sampled (13.5%) based their claims of ownership on the use of any institutional resources. Although this accounts for a small percentage of the results, it was important because this result is one that was not found in previous studies and may signal the start of a new trend for institutional claims of ownership.

When the results are disaggregated, we find that 4-year institutions rely more heavily on contracts than 2-year institutions (113 [90.4%] of the 125 four-year institutions compared to 99 [78.0%] of the 127 two-year institutions studied), and they are more likely to base their claims of ownership on substantial use of resources (85 [68.0%] of the 4-year institutions vs. 63 [49.6%] of the 2-year institutions). However, 2-year institutions appear to be the driving force behind the
rationale basing ownership claims on the use of any resources, with 24 (18.9%) basing their claims of ownership on this rationale compared to 10 (8.0%) of the 4-year institutions.

When examining financial considerations included in ownership policies, the analysis showed that the main concern was sharing of revenue. Of the 252 institutions studied, 152 (60.3%) included the possibility of revenue sharing within their policies. Other considerations included the requirement that faculty provide a license to the institution for material they owned (109 [43.3%] of the institutions studied), scenarios where the faculty were compensated for creating material that would subsequently be owned by the institution (81 [32.1%] of the institutions), the requirement that faculty reimburse the institution for resources used to create material that the faculty would subsequently own (56 [22.2%] institutions), and the provision that the institution would provide a license to the faculty-creator of work for which the institution was claiming ownership (37 [14.7%] institutions). When the results are viewed by sector, the analysis demonstrated that 4-year institutions were more likely to include financial considerations related to revenue sharing than 2-year institutions (91 [72.8%] out of 125 four-year institutions compared to 61 [48.0%] of the 127 two-year institutions studied).

The major finding related to control of faculty-created materials was that most of the policies did not address this area (194 [77.0%] out of 252 institutions studied). For those institutions that did include aspects related to control of material, the main concern was related to revision of the material (30 (11.2%) institutions overall, 19 (15.2%) of the 125 four-year institutions, and 11 (8.7%) of the 127 two-year institutions). One of the more troubling results related to dispute resolutions was the finding that 97 (8.5%) of the institutions studied did not include a dispute process within their ownership policies. Of the remaining institutions, 73 (29.0%) included provisions in which the institution would decide the final outcome, and 72
(28.6%) provided for an independent agent to determine the final outcome. When these results are viewed by sector, they show that 46 (36.8%) of the 125 four-year institutions and 51 (40.2%) of the 127 two-year institutions studied did not have a dispute process included in their policy; 42 (33.6%) of the 4-year institutions and 31 (24.4%) of the 2-year institutions specified that the institution would decide the final outcome; and 29 (23.2%) of the 4-year institutions and 43 (33.9%) of the 2-year institutions stipulated that an independent agent would decide the final outcome.

Although the majority of the institutions studied (158 [62.7%] out of 252) did not address disclosure and assignment requirements in their policies, this is a result that has not appeared in previous studies and may signal a new development in higher education institutions. Of the institutions that did include some or all of these provisions, 71 (28.2%) required faculty disclosure of the creation of intellectual property, 53 (21.0%) required faculty to execute a document that either disclaimed ownership of faculty work product or assigned ownership to the institution, and 14 (5.6%) of the institutions studied indicated that they would execute a document assigning ownership of faculty work product to the faculty-creator for material that the institution’s policy designated as faculty owned. When the results are disaggregated by sector, the analysis demonstrated that 4-year institutions appear to be the source of this new trend, with 43 (34.4%) of the 125 institutions studied requiring faculty disclosure, 42 (33.6%) requiring faculty to disclaim or assign ownership, and 13 (10.4%) indicating that the institution would assign ownership to faculty. This is significant when compared to the results for 2-year institutions (28 [22.0%] of the 127 institutions studied require disclosure, 11 [8.7%] require faculty to disclaim or assign rights, and one [0.8%] will assign ownership to faculty).
Discussion of Findings

This section provides a discussion of the findings from the document analysis. The section includes an overview of the findings from previous studies and concerns raised by scholars that relate to the findings of this study. The previous studies’ results and the scholar’s concerns are used as a framework for this discussion, which centers around the major findings of the document analysis. This section provides an examination of the study findings as they relate to the existence of ownership policies and their relation to institutional type, signature requirements, and financial considerations related to profit-sharing. The section continues with a discussion of licensing requirements and their relationship to faculty mobility, and control of faculty work product owned by the institution. The section ends with an examination of dispute resolution provisions and considers how these provisions may affect faculty motivation to participate in distance education.

Previous studies found that there are still institutions that do not have policies in place delineating ownership of faculty-created distance education materials, despite the fact that the ambiguity surrounding the ownership question has been identified as one of the reasons that keep faculty from participating in distance education initiatives (DiRamio & Kops, 2004; Twigg, 2000; Zhang & Carr-Chellman, 2006). The results of this study support DiRamio and Kops (2004) earlier finding that there may be a relationship between type of institution and the existence of an intellectual property policy. Specifically, the results demonstrate that 2-year institutions are less likely to have a publicly available policy than 4-year institutions (55 [30.2%] of the 182 two-year institutions included in the original sample compared to 5 [3.8%] of the 130 four-year institutions).
Another area of concern that arose in previous studies is that of signatures. Gertz (2013) contends that institutions need to have a written agreement between the faculty and the institution in order to satisfy the requirements of the copyright law and effectively designate ownership. This echoes earlier concerns by Lape (1992) regarding the signature requirements of the copyright law when transferring ownership, and was borne out in *Rahn v. Board of Trustees of Northern Illinois University* (2015) when the court stated that the university’s intellectual property policy (IPP) was unenforceable because it had not been signed by both the employee and the employer.

One reason why signatures are so important relates to the “teacher exception” to the U.S. Copyright Law’s provision that assigns ownership of employee work product to the employer. Unfortunately for faculty, it appears that the law is on the institution’s side when it comes to ownership of faculty work product. Although the courts had created a “teacher exception” to the mandate that employers should own the copyright to works created by employees, it appears that the exception may have been abandoned by the courts. According to Townsend (2003), “The Seventh Circuit in *Weinstein* … transferred the “teacher exception” from a case-based judge-made law to one dictated by university policy” (p. 65). The *Weinstein* case was decided in 1987, but there have been decisions since then that appear to rely on university policy when rendering their judgment. In *Shaul v. Cherry Valley-Springfield Central School District*, decided in 2004, the Second Circuit court denied the “teacher exception” argument used by Shaul on the grounds that the school district did not have a formal, written copyright policy and because the teaching materials in question were not created for publication (Gertz, 2013; Strauss, 2011). Based on its deliberations, the court that decided the *Molinelli-Freytes v. University of Puerto Rico* (2010) case ruled that the “teacher exception” did not survive enactment of the 1976 Copyright Act and,
therefore, could not be used as the basis for an argument claiming ownership of copyrightable material. Instead, the court recognized that academic institutions have policies designating ownership in copyrightable material, and they stated that the landscape of academia has changed with the arrival of distance education, thus providing impetus for academic institutions to desire ownership of at least some of their faculty’s output. Thus, the court recognized the financial interest that institutions may have in owning copyrightable work created by faculty for use in distance education. In 2015, the Seventh Circuit decided the case Rahn v. Board of Trustees of Northern Illinois University (2016). In deciding that the work in question was a work for hire, the court stated that the university’s intellectual property policy (IPP) was unenforceable because it had not been signed by both the employee and the employer, thus enacting a requirement that the institution and its faculty members need to sign the institution’s intellectual property policy to ensure that the policy is enforceable. It is important to note, however, that there has not been a definitive ruling that the “teacher exception” has been abolished. The plaintiffs in Rahn v. Board of Trustees of Northern Illinois University filed a Writ of Certiorari requesting that the Supreme Court review the case. Although the Writ requested consideration of several questions, the one of interest to this discussion is the third question:

Whether a university’s IPP, as a condition of a faculty’s employment contract, is an enforceable agreement granting ownership rights to faculty, (a) Whether a university’s IPP grant of ownership rights to faculty [the teacher exception to work for hire doctrine] survives the enactment of the Copyright Act of 1976 even without an IPP addendum to the employment contract. (Rahn v. Board of Trustees of Northern Illinois University, 2016).
Unfortunately, the Supreme Court decided not to hear this case, denying educators and educational institutions the opportunity to find out if the “teacher exception” still exists and, if so, whether it should follow the original exception defined in the case *Williams v. Weisser* or if it should adhere to the recommendations outlined in *Weinstein v. University of Illinois*, which recommended examining the institution’s policies when deciding ownership.

The results of this study show that although there are some institutions that require administrators and/or faculty to sign the institution’s intellectual property policy, usually this occurs when there is a collective bargaining agreement or employment contract in place. However, there are signs that institutions are taking notice of this requirement. As shown in the findings for this study, 53 (21.0%) of the 252 institutions studied now require faculty to execute a document either disclaiming ownership or assigning ownership to the institution for material that the institution lays claim to through their intellectual property policies. According to Gertz (2013), “University copyright policies typically disclaim ownership of traditional scholarly works”, even as the institution may stake a claim on other faculty created work based on the first definition of a work for hire (p. 1483). However, as demonstrated in recent course cases, these policies may not be sufficient to determine ownership of intellectual property, because ownership is based on the Copyright Law, which has specific methods through which ownership is created or transferred (Gertz, 2013; Packard, 2002). If the institution is, in fact, the owner of the copyright, then they would have to provide a written contract signed by both parties before the completion of the work in order to designate ownership to faculty as required by the second work-for-hire definition of the Copyright Law (Aaron & Roche, 2015; Centivany, 2011; Gertz, 2013; Holmes & Levin, 2000; Klein & Blanchard, 2011; Kranch, 2008; Lape, 1992; Loggie et al., 2007; Packard, 2002; Triggs, 2005; Wadley & Brown, 1998). On the other hand, if the
faculty member is the copyright owner, then the institution’s intellectual property policy would not provide ownership to the institution unless there was a written agreement signed by both parties, which is not typically the case with institutional policies. Then again, in the case of a transfer of ownership from a faculty copyright owner to an institution, it would be sufficient for the faculty member to sign a transfer agreement (Gertz, 2013; Lape, 1992; Packard, 2002). These scholar’s arguments demonstrate that faculty need to be aware of signature requirements within their institutions and how these requirements affect ownership of copyrightable material under the purview of the Copyright Law.

One of the primary reasons for an institution to assert ownership of faculty created online course material is the need to increase revenue (Lape, 1992). The creation of distance learning material that is owned or controlled by the institution gives the institution a new revenue stream, yet many faculty think that they should also be able to profit from online course material that they have developed (Packard, 2002). On the other hand, many online courses are developed with funding provided by the institution, which leads to the question of whether faculty should be able to sell course material whose creation was funded by the institution (Blanchard, 2010). Some institutions appear to have taken note of this particular concern by providing for revenue sharing arrangements in their intellectual property policies. The results of the study show that the majority of institutions (152 [60.3%] of the 252 institutions studied) have a revenue sharing arrangement, although 4-year institutions are more likely to provide this arrangement (91 [72.8%] of the 125 four-year institutions studied vs. 61 [48.0%] of the 127 two-year institutions).

Another identified area of concern relates to whether faculty can take the material they have created for an online course with them if they move to another institution (McPherson &
Based on the results of this study, some institutions have addressed this concern by either disclaiming ownership of faculty work product or by providing the faculty-creator with a license for material claimed by the institution. However, this raises the question of what happens if the faculty member moves to an institution that also claims ownership of faculty work product and how any conflicts that arise from this situation should be resolved.

Another issue that arises as a result of intellectual property policies is that of control of faculty work product. Faculty have an interest in ensuring the fidelity of course material by updating and revising the material (Lape, 1992; McPherson & Bacow, 2015; Zhang & Carr-Chellman, 2006). However, according to copyright law, it is the owner of the copyright who has control over the work (Gertz, 2013; Packard, 2002). Faculty are concerned that institutional ownership will allow for changes that do not require the approval of the faculty author of the course material, course material being offered without proper attribution to the author of the material, or a course being offered that is not current with changes in the field (Zhang & Carr-Chellman, 2006). However, institutions are concerned that faculty may choose to update too often, allowing such faculty to earn money or credit for updating a course when it was not needed (Zhang & Carr-Chellman, 2006). The results of this study demonstrate that most of the policies did not address control of the material (194 [77.0%] out of 252). For those institutions that did include aspects related to control of material, the main concern addressed was related to revision of the material (30 [11.9%] of the 252 institutions studied, 19 [15.2%] of the 125 four-year institutions, and 11 [8.7%] of the 127 two-year institutions). There were a few institutions that addressed the attribution question (13 [5.2%] institutions overall), but it appears that higher education institutions have failed to address these faculty concerns, for the most part.
One other potential issue that has been identified involves resolution of disputes concerning ownership of intellectual property. In their 2007 study on intellectual property policies of doctorate granting research institutions, Loggie et al. identified the practice of having institutions decide the outcome of disputes involving ownership of intellectual property as a growing area of concern. The results of this study showed that there are a significant number of institutions with dispute resolution stipulations that allow for the institution to make the final decision on ownership (73 [29.0%] of the 252 institutions studied). Furthermore, 4-year institutions are more likely to employ this type of dispute resolution (42 [33.6%] of the 125 four-year institutions studied vs. 31 [24.4%] of the 127 two-year institutions), while 2-year institutions are more likely to rely on an independent agent to make the final decision (43 [33.9%] of the 2-year institutions compared to 29 [23.2%] of the 4-year institutions). However, the practice of having the institution decide the outcome of ownership disputes may be seen as unfair or biased by faculty and may contribute to faculty resistance to teach or develop online courses. In addition, there is a question related to disputes and litigation that has not been addressed by scholars or within the court system. Specifically, who would be responsible if someone were to bring a suit against a faculty member related to their course content, but the institution is the owner of the material?

Policy Recommendations

This section provides policy recommendations related to the results of the document analysis performed on the policies delineating ownership of faculty work product at public higher education institutions that offer distance education. The section begins with an overview of the findings from previous studies and recommendation by scholars and leading educational organizations regarding ownership of faculty work product. The previous studies’ results and the
scholar’s recommendations are used as a framework for the author’s policy recommendations, which are based on the findings of this study.

Given the ambiguity surrounding ownership of faculty-created online course content, Kranch (2008) recommends that institutions institute formal written policies delineating ownership and the attendant rights associated with the institution’s ownership scheme. This sentiment is echoed by Minnaar (2013), who states that institutions and their faculty need an agreed-upon set of criteria on which to base ownership decisions and that the lack of such a policy may actually hinder the success of distance learning programs. When drafting policies, institutions should ensure a process that is viewed as fair by all by including representation for all affected stakeholders (DeVary, 2008). Furthermore, during the policy creation, institutions should consider the needs of faculty and students while making decisions about the components of their policies, and the institutions should communicate with faculty and other stakeholders to ensure that everyone’s needs are considered throughout the policy creation process (Styron et al., 2009; Zhang & Carr-Chellman, 2006). The results of this study may aid in the creation or revision of an institution’s intellectual property policy by providing a data-driven basis for policy decisions and a structure for the underlying components that might be included in the institutional policy.

When considering the content of intellectual property policies, there have been some specific suggestions proposed by scholars. For example, some scholars advocate for policies that lean more heavily towards faculty ownership in order to stimulate participation in distance education initiatives and caution institutions to consider the implications of policies that lean more towards institutional ownership (DiRamio & Kops, 2004; Welsh, 2000). Other recommendations include the need to provide consistency in compensation policies for online
teaching and development (St. Phard, Jr., 2015), and a suggestion that committees should make decisions related to ownership disputes (Krench, 2008). Furthermore, Van Dusen (2013) states that “policies should clearly set forth procedures for resolution of disputes, which will hopefully avoid litigation” (p. 7). In addition to these recommendations, Moloney and Oakley II (2010) examined successful online initiatives at a variety of institutions and found that one of the characteristics of a successful program was the “integration of the online programs in the campus mission and strategic plan” (p. 86). Moreover, they found that inclusion of the online segment into the organization’s mission led to more support at all levels of the institution for the online program.

Unfortunately, when we consider the ownership recommendations put forth by leading educational organizations, we find that there are differences between the recommendations made by organizations representing institutions and those representing faculty. These recommendations are, for the most part, clearly divided between faculty ownership and institutional ownership, although the American Council on Education (ACE) promotes the idea that institutions and their faculty should work together to create intellectual property policies (Aaron & Roche, 2015). The American Federation of Teachers (AFT), the National Education Association (NEA), and the American Association of Community Colleges (AACC) promote faculty ownership of intellectual property, although the AACC also believes that institutions should receive royalties if faculty are able to commercialize their work (Aaron & Roche, 2015; Klein & Blanchard, 2011). The American Association of University Professors (AAUP) also recommends that faculty should own the copyright to their work. However, the AAUP recognizes that there are cases where a work is a work for hire, such as through a contractual agreement, and they recommend that an institution be reimbursed through royalties or a licensing
agreement if a work requires unusual financial or technical support (Aaron & Roche, 2015; Klein & Blanchard, 2011; Kranch, 2008; Loggie et al., 2007; Nelson et al., 2014; Twigg, 2000; Zhang & Carr-Chellman, 2006).

On the other hand, the Association of American Universities (AAU) recommends that faculty should own scholarly materials. However, the AAU also endorses institutional ownership of online course material because they see the creation of online material as a collaborative endeavor. Furthermore, the AAU recommends that royalties should be shared amongst the creators of online courses and the institution. However, the AAU advocates for institutional ownership of course material that is created with substantial institutional resources (Kbranch, 2008; Loggie et al., 2007; Zhang & Carr-Chellman, 2006). Bolstering the recommendation of the AAU is that of the National Association of College and University Attorneys (NACUA), who also endorse institutional ownership for the creation of work that uses substantial university resources (Nelson et al., 2014).

The results of this study demonstrate that not all post-secondary institutions follow the aforementioned recommendations when crafting ownership policies. However, there are indications that some institutions are trying to incorporate at least some of these recommendations when creating their policies. It is clear that the interests of institutions and their faculty are at odds when it comes to ownership of faculty work product, especially when the work is created for use in an online course or program. There does not appear to be a conflict over the ownership of scholarly material considering that both the faculty organizations and the institutional organizations recommend that faculty own that type of material. This is borne out by the findings of this study, which show that 137 (54.4%) of the 252 institutions studied disclaim ownership of scholarly work. When broken down by sector, we find that 4-year
institutions are more likely to disclaim ownership of scholarly work than 2-year institutions (88 [70.4%] out of 125 four-year institutions compared to 49 [38.6%] out of 127 two-year institutions). However, this difference may also be a reflection of the fact that faculty at 2-year institutions are not typically required to create scholarly work, which may be why this component is not usually addressed within the ownership policies of 2-year institutions.

When examining the results of this study, it appears that institutions have become aware that courts may be leaning towards institutional ownership and are exerting claims of ownership of faculty work and at least partial control of the work that they claim. Furthermore, institutions appear to be taking heed of the signature requirements indicated by the courts, with 91 (36.1%) of the 252 institutions studied requiring an administrator’s signature on their policy and 87 (34.5%) requiring a faculty member’s signature. In addition, some institutions have included provisions within their ownership polices that require faculty to execute a document either disclaiming ownership or assigning ownership for material for which the institution claims ownership (53 [21.0%] of the institutions studied). Considering that many institutions either fail to include a dispute process within their policies (97 [38.5%] of the institutions studied), or designate a process in which the institution makes the final decision (73 [29.0%] institutions), it would appear that faculty should insist that signatures be included within the policies to ensure that the policy is enforceable in the event that a faculty member feels that litigation is required.

As to the institutional policies that designate ownership of faculty work, the most desirable outcome would be a policy that satisfies the interests of every stakeholder and addresses all the needs and concerns of the stakeholders. However, considering that the interests of institutions and their faculty are at odds, as demonstrated by the conflicting policy recommendations between faculty organizations and institutional organizations, and the fact that
the courts appear to be leaning towards institutional ownership, then it seems that faculty should
be focused on the more realistic objective of maintaining some control over the material. Unfortunately, most of the 252 institutions studied (194 [77.0%] institutions) did not address control of the material within their policies. This is an area in which faculty could exert some influence by approaching their institutional administrators and requesting that this component be included within the ownership policy.

When creating or revising an institution’s intellectual property policy, the institution may want to address certain elements within those policies. The results of this study show that the most common elements found are related to the categories: (a) types of ownership; (b) financial considerations, such as payment for content creation or reimbursement for resources used; (c) control of faculty-created content; (d) underlying rationale for claiming ownership of content; (e) settlement of disputes; and (f) disclosure and assignment of rights. As shown by this study, not all institutions have included all six elements within their policies, but these are the most common found overall. When addressing types of ownership, most of the 252 institutions studied (212 [84.1%] institutions) included provisions for faculty ownership of at least some faculty work product, although there were some institutions (90 [35.7%] institutions) that claimed ownership without any exceptions for scholarly or course materials. Also, many included the possibility of joint ownership (112 [44.4%] institutions), or claimed ownership with exceptions provided for either scholarly material, course material, or both (149 [59.2%] institutions). In addition to these findings, the author recommends that institutions provide definitions regarding what constitutes scholarly material and what is considered course material if the institution plans to include provisions regarding these two categories within their policy.
When financial considerations are included in institutional ownership policies, they usually address factors related to revenue sharing between the faculty and the institution (152 [60.3%] of the 252 institutions studied), license provisions (109 [43.3%] institutions require faculty to provide a license for work owned by faculty, although only 37 [14.7%] required institutions to provide a license to the faculty-creator of work claimed by the institution), remuneration for work that is subsequently claimed by the institution (81 [32.1%] of the institutions studied), and requirements for faculty to reimburse the institution for resources used in the creation of work that the institution designates as faculty owned but that utilized institutional resources for the creation of the work (56 [22.2%] institutions). One noteworthy aspect of these provisions relates to the disparities found within the licensing schemes included within institutional ownership policies. The most commonly encountered scenario was for a non-exclusive, royalty-free license, with variations on how long the license is in effect. Some institutions designate a time limit for the license, while others provide for a perpetual license. The author recommends that institutions that choose to include licensing provisions consider the effect of requiring a perpetual license. Because faculty tend to move around, it may be more reasonable to include a time limit on the license; at the very least one that expires at some point after a faculty member leaves an institution. In addition, the author recommends that institutions that include provisions for remuneration within their policies make sure that they are clear about exactly what is required in order to earn the remuneration offered. Furthermore, as St. Phard, Jr. (2015) recommends, institutions should be consistent about the compensation included in their policies as they relate to online teaching and development.

In regard to control of faculty work product, this study found that most of the institutions studied (194 [77.0%] out of 252) failed to address control within their policies. This is
unfortunate because control of material is one of the concerns that have been identified as being a deterrent for faculty involvement in teaching and developing distance education course material (Zhang & Carr-Chellman, 2006). For institutions that do address control of material, the most significant finding was that they typically address faculty revision of work (30 [11.9% institutions]). Other categories that were included in institutional policies related to provisions for faculty to choose whether they want their name associated with material they had created (13 [5.2% institutions]), whether the institution wanted their name associated with work created by faculty (7 [2.8% institutions]), requirements for faculty approval before reuse or rebroadcast of material (6 [2.4% institutions]), and the right of first-refusal for the faculty member creating a distance education course (12 [4.8% institutions]). Unfortunately for faculty, the copyright law provides that the owner of the copyright has control over the work (Gertz, 2013; Packard, 2002). However, institutions claiming ownership of faculty work product can elect to provide some measures of control to faculty, thereby alleviating faculty concerns related to changes made to material without the approval of the faculty-creator, course material being offered without proper attribution to the author of the material, or courses being offered that are not current with changes in the field (Zhang & Carr-Chellman, 2006).

When institutions provide the underlying rationale for their claims of ownership, they generally fall within three categories: ownership based on contracts (212 [84.1%] of the 252 institutions studied), ownership based on the copyright law definition of employees working within the scope of their employment (179 [71.0%] institutions), and ownership based on substantial use of institutional resources (148 [58.7%] institutions). As we noted previously, this is an area in which faculty organizations and institutional organizations agree. Specifically, these organizations recommend institutional ownership whenever the creation of material involves a
substantial use of institutional resources. What is notable about these recommendations is that
use of substantial resources is not included in the copyright law as an underlying reason for
awarding ownership of employee work to an employer. Another important result that emerged
from the study is the claims of ownership some institutions are making based on use of any
institutional resources (34 [13.5%] institutions). This result was not found in previous studies
and may signal a change in the criteria used by institutions to determine ownership of material.

When examining the institutional policies delineating ownership of faculty work, the author
found that some of the institutions that claim work based on scope of employment would only
exert this claim if a faculty member was specifically directed to create a work that the institution
wanted to own. Other institutions only staked their ownership claims on the basis of contracts
provided for specific work that the institution would subsequently own. In addition, the author
found that some institutions that based their claims of ownership on substantial use of
institutional resources failed to provide a definition of what constituted substantial resources
when making this determination. Based on these findings, the author recommends that
institutions that choose to provide the rationale for their claims of ownership should clearly
define the terminology used within the policy, such as substantial resources. In addition, for
institutions that choose to only claim material that the faculty member is directed to produce, the
author recommends the creation of a written document, preferably a contract, outlining the
expectations placed on faculty in connection with creation of the work, explaining any
compensation that faculty may expect for creation of the work, if any, and outlining any rights
the faculty-creator has in regard to control of the work or granting of licenses.

The next component that may be found within the institutional policies designating
ownership of faculty work product relates to settlement of disputes. As recommended by Van
Dusen (2013), “Policies should clearly set forth procedures for resolution of disputes, which will hopefully avoid litigation” (p. 7). However, the results of this study show that many institutions (97 [38.5%] of the 252 institutions studied) do not include dispute resolution processes in their ownership policies. For those that do, 73 (29.0%) outline a process in which the institution makes the final decision, while 72 (28.6%) include provisions for an independent agent to make the final decision. The author recommends that institutions include a dispute resolution process that is fair to all. Because the institution has a vested interest in the outcome, the author recommends further that the dispute process include provisions for an independent agent to make the final decision. In any case, if an institution does include a dispute process within their ownership policy, the author recommends that the process be clearly defined and any documentation requirements should be provided so that anyone preparing a dispute will know what is needed and how the process works.

The final element that was found within the institutional ownership policies related to requirements for disclosure of the creation of intellectual property and the assignment of rights. The results of this study showed that most of the 252 institutions studied (158 [62.7%] institutions) did not include requirements for disclosure or assignment of rights. Of the remaining institutions, 71 (28.2%) required faculty to disclose the creation of intellectual property, and 53 (21.0%) required faculty to execute a document either disclaiming ownership of the material, or assigning title to the institution. In addition, 14 (5.6%) of the institutions studied indicated that they would execute an assignment of title for material that the institution indicated through their policy would belong to faculty, but faculty were typically required to request the assignment document. As noted previously, this requirement seems to be related to the signature requirements that courts look for when deciding cases related to ownership of faculty work.
product. The author recommends that institutions should incorporate signatures directly within the intellectual property policy, and that both an institutional representative and the faculty member (or their representative) sign in order to ensure that the policy does, in fact, establish ownership as provided for within the document. If disclosure requirements are included within the institution’s policy, the author recommends that the policy be clear about exactly what material requires disclosure, especially in cases where the institution is disclaiming ownership of scholarly material and/or course material.

In addition to the recommendations for each element of the intellectual property policies, the author recommends that the institution establish a process for creation or revision of its policy that is viewed as fair by all stakeholders within the institution and that every stakeholder considers the needs of the other stakeholders during the creation process (DeVary, 2008; Styron et al., 2009; Zhang & Carr-Chellman, 2006). Furthermore, the author recommends that the institution ensures that all stakeholders affected by the policy are made aware of the policy and its requirements and that potential changes to the policy be communicated in advance so that any affected stakeholders can voice any concerns they may have about the changes. In addition, the author recommends that institutions should make note of the study done by Moloney and Oakley II (2010), which found that one of the characteristics of a successful distance education program was the “integration of the online programs in the campus mission and strategic plan” (p. 86). Furthermore, they found that when the online segment was incorporated into the organization’s mission that this inclusion led to more support at all levels of the institution for the online program. Hence, the author recommends that institutions include their online programs in the mission and strategic plan of the institution in order to create support for the programs which may help the programs succeed.
**Recommendations for Future Research**

Based on the results of this study, there are several areas of future research that should be considered. The first relates to how the content of the policies that delineate ownership of faculty-created material affect faculty motivation to participate in distance education. Faculty motivation regarding faculty involvement in distance education is an important area considering that faculty involvement affects the successful implementation of distance education programs (Hoyt & Oviatt, 2013; Shea, 2007; St. Phard, Jr., 2015; Tabata & Johnsrud, 2008). However, faculty may be resistant to developing online courses if the copyright ownership will be vested in the institution (DiRamio & Kops, 2004; Twigg, 2000; Zhang & Carr-Chellman, 2006). One way to investigate this critical area would be to survey faculty to see how the question of ownership of faculty work product affects their motivation to participate in distance education. Other related suggestions would include replication of this study in a variety of ways. For example, this study could be replicated on a state-by-state basis, or replications could focus on the policies at private higher education institutions. Another suggestion would be for replication of this study internationally, or at least such a study could include countries that have their own copyright laws.

Another area of study relates to student ownership of material they have created. During the analyzation process for this study, there were multiple instances found where institutions were claiming ownership of material authored by students. There were two instances recorded for this study where the institution’s intellectual property policy was found in student handbooks. In both of those cases, the policies were meant to cover both employees and students. Many of the other policies included in this study incorporated ownership of student work, and there were indications during the policy retrieval process that there were some institutions with separate
policies addressing student intellectual property. Although the researcher made note of the existence of these policies, they were outside the scope of this study. However, there is a need to examine those policies to determine the content of those policies. Furthermore, another potential area for future research may center on how these policies affect student motivation.

The final recommendation for future research relates to the content of intellectual property policies. The findings from this study contribute to the body of knowledge contained in the literature related to ownership of faculty-created material, but these findings also provide a basis for future research. Scholars may want to study how these policies are changing over time, therefore the results of this study could provide the basis for comparison. In addition, the results could be used as a framework for studying how decisions related to the creation of intellectual property policies are made.

**Conclusion**

In response to the increased demand for online education, the number of higher education institutions offering online courses has grown rapidly (Kentnor, 2015; Longstaff, 2014; Maguire, 2005). However, one issue that has become increasingly important in higher education is the question of ownership of faculty-created online course content. Unfortunately, the claims of ownership that institutions are placing on faculty-created material has led to conflict between faculty and their institutions, which can have significant implications for higher education institutions because faculty involvement affects the successful implementation of distance education programs (Hoyt & Oviatt, 2013; Shea, 2007; St. Phard, Jr., 2015; Tabata & Johnsrud, 2008). Prior to the proliferation of online education, faculty were the keepers of course knowledge, except for perhaps course outlines and syllabi. Now, though, computers have made it possible to digitally capture the materials created by faculty for course delivery, making these
materials more valuable to the institutions where faculty work, as these materials can provide a revenue stream unheard of in the past in the form of online education. One can surmise that the conflict between higher education institutions and their faculty may intensify as distance education continues to grow. This makes it increasingly important to understand how institutional administrators make decisions regarding ownership and control of faculty work. However, according to Rooksby (2016b), the lack of recent empirical studies in the literature regarding copyright prohibits an understanding of how administrators make decisions regarding copyright ownership and use of copyrighted materials.

This study adds to the body of literature regarding the policies of public higher education institutions that provide distance education by establishing the key components of those policies and learning how they differ within higher education institutions. This study also examined the signature requirements of the intellectual property policies studied because this has been identified as an issue that may affect whether these policies are legally enforceable. Unfortunately for faculty, it appears that the courts may have sided with educational institutions regarding ownership of faculty work product. Recent court rulings show that courts may choose to look to an institution’s intellectual property policy, although some courts have indicated that both the institution and faculty must sign the policy in order for it to be legally enforceable. Hence, one may surmise that the “teacher exception” that allowed faculty to retain ownership of faculty work product may have been abolished, although this has not been tested in a court case.

The findings of the study demonstrated that there are a wide variety of ownership policies in place, but the content of the policies generally fit into six categories that were established through the literature review process and the document analysis procedure. According to Styron et al. (2009), “By understanding the factors that key administrators need to consider, universities
can plan, prepare, and revise distance education policies and procedures to alleviate some of the current barriers in expanding distance education offerings” (p. 95). In addition, institutions that lay claim to faculty work product tend to provide one or more of the following three rationalizations for their claims of ownership: Claims based on a contractual relationship, work created within a faculty member’s scope of employment, or substantial use of institutional resources. In addition, the study showed that some institutions staked their claims of ownership on use of any institutional resources. This result has not been found in prior studies and may signal a change in how higher education institutions determine ownership of faculty work product. In conclusion, the results of this study may assist institutional efforts to create or revise their policies delineating ownership by providing a basis for the institutions to address known issues related to ownership and control of faculty-created material, financial considerations that may affect faculty motivation, and issues related to dispute resolutions. In addition, the results may provide faculty with a basis for negotiating particular aspects of the ownership policies at their institutions.
Appendix A

IRB Documentation of Study Exemption

MEMORANDUM

DATE: May 9, 2018

TO: Dr. Terry Cavanaugh

FROM: Dr. Jennifer Wesely, Chairperson
On behalf of the UNF Institutional Review Board

RE: “Intellectual Property Policies Concerning Ownership of Faculty-Created Online Course Materials in Public Higher Education Institutions”

Student: Tracey Makley

This is to advise you that the protocol submitted for the project named above was reviewed on behalf of the UNF Institutional Review Board, and subsequently granted this waiver of IRB review. As such, this project was declared “not research involving human subjects” based on the federal definition as stated in the U.S. Department of Health and Human Services Code of Federal Regulations 45 CFR 46.102. Therefore, it is not necessary for this project to be reviewed and approved by the UNF IRB. The principal investigator is not absolved from complying with other federal, state, or local laws or institutional policies and procedures.

If this project will be conducted at one or more institutions with an IRB, personnel on this project is to communicate with the respective IRB office(s) and fulfill all requirements of the host IRB prior to initiating this project.

Thank you for submitting your work for IRB review. We appreciate that you understand the value of IRB review of human subject research and projects conducted at UNF. Any unanticipated problems involving risk and any occurrence of serious harm to subjects and others shall be reported promptly to the IRB.

This waiver should be kept for your records and applies to your project in the form and content as submitted to the IRB for review. Any variations or modifications to this waived project such that data will be generalized must be cleared with the IRB prior to implementing such changes.

Should you have questions regarding your project or any other IRB items, please contact the research integrity unit of the Office of Research and Sponsored Programs by emailing IRB@unf.edu or calling (904) 620-2455.

This letter has been electronically signed in accordance with all applicable regulations and a copy retained within UNF’s records.
Appendix B

Document Analysis Coding Form: Final Version

IPP Study Coding Form

* Required

1. Enter the name of the person filling out the form. *

________________________________________________________________________

2. Demographics: Enter the name of the institution. *

________________________________________________________________________

3. Policy Information 1: Where was the policy retrieved from? (Check all that apply) *

   Check all that apply.
   
   [ ] There were no publicly available policies found.
   [ ] Institutional policy specific to distance education/course materials
   [ ] Institutional Policy, other than distance education/course material (Choose this option if no other option is indicated).
   [ ] Institution’s Board Policy
   [ ] System Policy (including System Board policy)
   [ ] Collective Bargaining Agreement/Employment Contract
   [ ] Faculty/Employee Handbook
   [ ] Student Handbook
   [ ] Other: __________________________

4. Policy Information 2: Is an administrator’s signature required?

   Mark only one oval.
   
   [ ] Yes
   [ ] No
   [ ] Unsure
5. Policy Information 2a: If an administrator’s signature is required, indicate what type of policy requires the signature (Check all that apply).

   Check all that apply.
   - Institutional Policy specific to distance education/course material.
   - Institutional Policy, other than distance education/course material (Choose this option if no other option is indicated)
   - Institution’s Board Policy
   - System Policy (including System Board policy)
   - Collective Bargaining Agreement/Employment Contract
   - Faculty/Employee Handbook
   - Student Handbook
   - Other: ________________________________

6. Policy Information 3: Is the faculty member’s (or designee) signature required?

   Mark only one oval.
   - Yes
   - No
   - Unsure

7. Policy Information 3a: If the faculty member’s signature is required, indicate what type of policy requires the signature (Check all that apply).

   Check all that apply.
   - Institutional Policy specific to distance education/course material.
   - Institutional Policy, other than distance education/course material (Choose this option if no other option is indicated)
   - Institution’s Board Policy
   - System Policy (including System Board policy)
   - Collective Bargaining Agreement/Employment Contract
   - Faculty/Employee Handbook
   - Student Handbook
   - Other: ________________________________
Policy Coding

8. Coding Category a) Types of ownership for material created as part of the faculty’s employment.
   Check all that apply.
   - Faculty Ownership
   - Joint ownership
   - Institutional Ownership, with no exceptions
   - Institutional ownership except for faculty-created traditional scholarly works, such as books or journals.
   - Institutional ownership except for faculty-created course materials, such as lecture notes or assignments.
   - Institutional ownership except for both scholarly work and course materials.
   - Ownership not addressed in policy.
   - Other: ____________________________________

9. Coding Category b) Financial considerations, such as payment for content creation or reimbursement for resources used
   Check all that apply.
   - Faculty member is paid to produce the work or given a reduced work load and then the institution claims ownership of the work.
   - Faculty owns the work, but is paid to produce the work or given a reduced work load.
   - Faculty member owns the rights to the work, but must reimburse the institution for resources used.
   - Faculty member and the institution may share revenue from faculty-created work.
   - Faculty owns, but grants royalty-free license to institution
   - Institution owns, but grants royalty-free license to faculty
   - Faculty cannot profit from sale of faculty-created material.
   - Sale of faculty-created material requires administrative approval.
   - Faculty cannot charge institution or students for use of material needed to carry out teaching responsibilities.
   - Non-compete clause.
   - There is no description of financial considerations included in the policy.
   - Other: ____________________________________
10. Coding Category c) Control of faculty-created content (Check all that apply)
   *Check all that apply.*

   - The faculty member owns and controls the content.
   - The institution owns and controls the content.
   - The institution owns the content, but the faculty member has full control over the content, including the right to revise and create derivatives of the content.
   - The institution owns the content, but allows the faculty creator to revise the content.
   - The institution owns the content, but allows the faculty creator to create derivatives of the content.
   - Faculty owns the content, by institution has right to modify the content.
   - Faculty choose if they want their name associated with work they created.
   - Institution chooses if it wants its name associated with work created by faculty.
   - Faculty approval is needed for reuse/rebroadcast of course they created.
   - Faculty has right of first-refusal to teach online course they have created.
   - Control of content is not addressed in the policy.
   - Other: ____________________

11. Coding Category d) Underlying rationale for the institution to claim ownership of content.
    (Check all that apply)

    *Check all that apply.*

    - Institution does not claim ownership of any faculty-created content.
    - Work is claimed based on a substantial use of institutional resources.
    - Work is claimed based on use of any institutional resources.
    - Work is claimed based on the work-for-hire definition of an employee creating the work within the course or scope of their employment, including work that is assigned to faculty.
    - Work is claimed based on the work-for-hire definition of a contractual agreement between the employee and employer, including contracts created for a specific work.
    - Work is claimed for work that is created over time by many people.
    - Work is claimed that becomes part of the institution’s literature/policies.
    - Institution provides that ownership of materials is subject to any applicable laws that affect ownership rights.
    - There is no rationale provided for the institution’s claim of ownership.
    - Other: ____________________
12. **Coding Category e) Settlement of disputes**

*Mark only one oval.*

- [ ] There is not a process for disputes outlined in the policy.
- [ ] Institution decides outcome of dispute.
- [ ] Faculty decides outcome of dispute.
- [ ] Faculty and institution decide outcome of dispute jointly.
- [ ] Faculty and institution decide outcome jointly, but institution decides in case of tie.
- [ ] An independent agent decides outcome of dispute (One-step process)
- [ ] An independent agent decides outcome of dispute, as the last step of a multi-stage grievance/complaint process.
- [ ] Institution decides outcome of dispute, as the last step of a multi-stage grievance/complaint process.
- [ ] Other: __________________________________________________

13. **Coding category f) Disclosure and assignment of rights.**

*Check all that apply.*

- [ ] Faculty disclosure of development of intellectual property is required.
- [ ] Faculty are required to execute document disclaiming ownership or assigning rights to intellectual property to institution.
- [ ] Institution will execute documents assigning ownership to faculty.
- [ ] Neither disclosure nor assignment is addressed in the policy.

14. **Comments Section:** Describe any unusual characteristics of the policy, conflicts between policies for institution’s with more than one policy, or anything else of note here.

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
References


Learning, 52(2), 45-51.


Molinelli-Freytes v. Univ. of Puerto Rico, 792 F. Supp. 2d 150 (1st Cir., 2010).


\url{http://www.londoninternational.ac.uk/our-global-reputation/our-history}


U.S. Const. art. I, § 8, cl. 8


VITA

Tracey S. Makley

Education

2018              Doctor of Educational Leadership
                  University of North Florida

2006              Master of Science, Mathematics
                  University of North Florida

2004              Bachelor of Science, Mathematics
                  University of North Florida

Professional Experience

2007 – present    Professor of Mathematics
                  Florida State College at Jacksonville

2006 – 2009        Adjunct Instructor, Mathematics
                  University of North Florida

2004 – 2006        Graduate Teaching Assistant
                  University of North Florida

2006 – 2007        Mathematics Teacher
                  Martin J. Gottlieb Day School

Conference Papers and Presentations

Makley, T. (2017, March). The “teacher exception” to the United States Copyright
Law: Does it still exist? In Society for Information Technology & Teacher Education
International Conference (pp. 228-234). Association for the Advancement of Computing
in Education (AACE).

Makley, T. (2016, March). Who owns online course content? A review of
institutional policies regarding ownership of online course content. In Society for
Information Technology & Teacher Education International Conference (pp. 285-291).
Association for the Advancement of Computing in Education (AACE).

Honors

Phi Kappa Phi Honor Society
Golden Key International Honor Society
Pi Mu Epsilon Mathematics Honor Society