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Office of the Vice President for Academic Affairs

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Memorandum No. OVPAA 2020-91

**For: Faculty, Department Chairs, Program Directors, Institute Directors,
and Deans**

Through the Chancellors

cc: Vice-Chancellors for Academic Affairs

CRB

From: Maria Cynthia Rose Banzon Bautista
Vice-President for Academic Affairs

**Re: GUIDELINES FOR USING OR INCORPORATING COPYRIGHTED WORKS
INTO COURSE PACKS FOR THE FIRST SEMESTER AY 2020-2021;
FAQ REGARDING FACULTY COPYRIGHT OVER COURSE PACKS**

For the guidance of the faculty, attached to this Memorandum are guidelines for incorporating copyrighted works into course packs for the First Semester AY 2020-2021 (Attachment A) and an FAQ on the faculty members' copyright over course packs (Attachment B).

Thank you for your consideration. All the best in your preparations for the First Semester AY 2020-2021. Please stay safe.

ATTACHMENT A

GUIDELINES FOR USING OR INCORPORATING COPYRIGHTED WORKS INTO COURSE PACKS FOR THE FIRST SEMESTER AY 2020-2021

1. Copyright protects all literary and artistic works including software. Even works made freely available on the Internet by the author or publisher are protected by copyright. For example, as copyright owner or holder, the author or creator has the right to grant members of the public the right to reproduce, distribute, make derivative works out of the copyrighted work for non-profit educational purposes without charging a license fee. (See for instance the concept of “copyleft”¹ as well as the Creative Commons licenses²). Works made available to users on paid sites are likewise covered by copyright.

Please carefully read the copyright licenses for works that you intend to include in your course packs to see what rights have been granted and the limitations to the exercise of these rights etc³.

Copyright vests from the moment of mere creation⁴. Unpublished letters⁵, draft articles, research papers or manuscripts are covered by copyright.

As a general rule, if the work is covered by copyright, you cannot:

- a. Photocopy, copy, or distribute a copy of the work or substantial portion of it;
- b. Make a copy of the work or substantial portion of it available;
- c. Make a derivative work;⁶ and,
- d. Link to an unauthorized copy appearing on the Internet.⁷

However, the Philippine Intellectual Property Code⁸ (IP) excludes from copyright protection underlying ideas, procedures, systems, methods or operations, concepts, principles, discoveries or mere data as such, even if expressed, illustrated, or embodied in a work. Copyright protects the form of the expression of ideas not ideas *per se*. It also excludes from copyright protection news of the day⁹ or items of press information; official texts of legislative, administrative or legal nature; and any work of the Philippine Government¹⁰. Such excluded

¹ <https://opensource.com/resources/what-is-copyleft>

² <https://creativecommons.org/licenses/by/4.0/>

³ Please visit for instance the licenses for UP’s subscriptions to databases, journals and the like

⁴ 172.2 of the IP Code

⁵ |Sec 178.6 IP Code

⁶ Sec 173 IP Code

⁷ For more information refer to Sec 177 IP Code

⁸ For a PDF copy of the IP Code, see <https://www.ipophil.gov.ph/intellectual-property-code-implementing-rules-and-regulations/>.

⁹ ABS CBN VS Felipe Gozon et al. GR 195956 March 11 2015 citing Baker vs Selden’s distinction between ideas and expression. A news event must be distinguished from the news footage covering such event which may be copyrighted. “An idea or event must be distinguished from the expression of that idea or event”

¹⁰ A work of the Government of the Philippines is a work created by an officer or employee of the Philippine Government or any of its subdivisions and instrumentalities, including government-owned or controlled corporations as part of his regularly prescribed official duties. Sec 171.11 of the IP Code. Note however that under 176 IP Code permission must be obtained from the government office concerned if the work will be used for profit.

subject matter may be used in the course packs since these are not protected under copyright.

2. Copyright also has limited duration. The duration of copyright is generally, lifetime of the author plus 50 years. Photographs and audiovisual works are only protected for 50 years from publication or production. Broadcasts are protected for 20 years from broadcast.¹¹ Once the period lapses, the work falls into the public domain and any person can make use of it.

Further, UP as a state university can optimize the protection granted to it under the IP Code to achieve its objective of providing educational materials to its students especially during this emergency.

Section 184.1 (e), (f) and (h) of the IP Code expressly provides that: "Sec. 184. Limitations on Copyright.- 184.1. Notwithstanding the provisions of Chapter V, the following acts shall not constitute infringement of copyright:

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"(e) the inclusion of a work in a publication, broadcast, or other communication to the public, sound recording or film, if such inclusion is made by way of illustration for teaching purposes and is compatible with fair use: Provided, That the source and of the name of the author, if appearing in the work, are mentioned;

(f) The recording made in schools, universities, or educational institutions of a work included in a broadcast for the use of such schools, universities or educational institutions: Provided, That such recording must be deleted within a reasonable period after they were first broadcast: Provided, further, That such recording may not be made from audiovisual works which are part of the general cinema repertoire of feature films except for brief excerpts of the work;

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(h) The use made of a work by or under the direction or control of the Government, by the National Library or by educational, scientific, or professional institutions where such use is in the public interest and is compatible with fair use."

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As a State University, Sec.184.1 (e) of the IP Code especially gives UP wide latitude in the use of copyrighted works especially since the use is for the public interest and is for a non-commercial purpose.

In addition, Sec. 185 provides that the fair use of a copyrighted work for criticism, comment, teaching including limited number of copies for classroom use, scholarship, research, and similar purposes is not an infringement of copyright. While there are 4 factors to be considered in determining fair use (purpose of the use; nature of the copyrighted work; amount and substantiality of portion used; and effect of use upon the potential market of the work), Sec. 185 expressly provides that the use of copyrighted work for teaching is not an infringement of copyright provided the number of copies made available is limited. **The use of copyrighted works to provide educational materials to students during a pandemic highlights the public interest involved in the use of the materials.**

Section 187 of the IP Code also exempts from copyright infringement the private reproduction by a natural person exclusively for research and private study of a published work provided it is not the entire book or a substantial portion of the book or the entire compilation of data.

¹¹ Chapter XVI IP Code

3. You can use the work in the course packs if:
 - a. permission is obtained from the copyright owner (author or publisher) or author of the unpublished work;
 - b. you provide links to the work on your course pack that is freely available or authorized copy on the Internet or from UP's authorized subscriptions;
 - c. the copyright over the work has expired;
 - d. the work is not protected under copyright (e.g. work of the Government; official legislative or administrative text; news of the day; ideas, concepts, etc.);
 - e. your use is pursuant to Sec. 184.1 (e), (f) and (h) of the IP Code (quoted above) and the use is not abusive or does not unreasonably prejudice the rights of the copyright owner;
 - f. the course pack does not reproduce an entire book or a substantial portion thereof or an entire compilation of data¹². If the course pack requires the use of the entire book or a substantial portion, faculty members must require that students procure an authorized copy of the book;
 - g. under fair use provided the number of copies are limited for the students' use. Printed and online course packs must contain a notice that students should not reproduce or distribute the copy of the copyrighted materials provided to them in the course pack since it is limited for their personal use; and,**
 - h. the work is released on a Creative Commons License (see reference link above).

4. In case of any complaint of copyright infringement, such complaint must be received by the Office of the Vice-President for Public Affairs (OVPPA) through its email copyright.ovppa@up.edu.ph It must be referred to the Office of the Vice-President for Academic Affairs (OVPAA) through its email copyright.ovpaa@up.edu.ph no later than five (5) days from receipt of the complaint. The OVPAA shall then contact the person alleged to have infringed the copyrighted material in order to allow such party to respond to the complaint no later than ten (10) days after receiving the referral from the OVPPA. In the meantime, the OVPAA shall expeditiously order the removal or disable the public access to the allegedly infringing material. The University will resolve the complaint no later than thirty (30) working days after receiving it.

¹² See Habana et al vs Robles and Goodwill trading GR No. 131522 July 19, 1999 "If so much is taken that the value of the original work is substantially diminished, there is an infringement of copyright..."

ATTACHMENT B

FREQUENTLY ASKED QUESTIONS REGARDING FACULTY MEMBERS' COPYRIGHT OVER COURSE PACKS

1. What learning materials can be protected by copyright?

All original literary, artistic and musical works are protected by copyright unless excluded by law (the IP Code).

Learning materials (e.g. text, videos, codes, protocols, process, procedures, design, et al.) are copyrightable for as long as they are literary and artistic works; and, these works are original, expressed in tangible form (data stored included) and there is work of authorship. (IP Code 172/ 173)

The following are excluded from protection by law: "any idea, procedure, system, method or operation, concept, principle, discovery or mere data as such, even if they are expressed, explained, illustrated or embodied in a work; news of the day and other miscellaneous facts having the character of mere items of press information; or any official text of a legislative, administrative or legal nature, as well as any official translation thereof." (IP Code 175) In addition, no copyright shall subsist in any work of the Government of the Philippines. (IP Code 176)

2. Does a faculty need to file for copyright protection?

No. But a faculty may opt to register and deposit two copies of the work before the National Library. If the work is in the field of law, the registration and deposit will be made before the Supreme Court. Registration can be done online.

3. Who owns the learning materials, the faculty or university?

a. The learning materials as a property (or a fruit one's labor) should be distinguished from the copyright of the literary or artistic works contained in the learning materials (IP Code 181).

To illustrate, the hard copy of a textbook (as a learning material) may be owned by a student who lawfully purchased the same. However, the copyright over the text, illustrations etc. contained in the book remains with the author. (IP Code 181).

Ownership over learning materials (as distinguished from copyright) will be determined by an agreement or contract between the faculty and university.

b. If the question refers to ownership of copyright over the learning material itself, as a form of derivative work consisting of a "collection of literary, scholarly or artistic works, ...etc.", it is possible for copyright to subsist over the learning material independent of the copyright over the said collection of literary, scholarly and artistic works, etc. .." A learning material may be

copyrightable (as a derivative work), provided it is “original by reason of the selection or coordination or arrangement of their contents.” (IP Code 173.1b)

As a rule, ownership of copyright over the learning material itself (as a derivative work) is with the creator of the said material. However, the said copyright may be assigned to the University. The assignment does not necessarily mean an assignment of the copyright over the collected works, which could be owned by third party authors.

4. If the learning material is made by several faculty members, do they have equitable ownership of the material?

In the event a particular course pack prepared by several faculty members is deemed to have originality, ownership of the material will depend on the intention of the faculty members which should be agreed upon before they start creating the work of “joint authorship”.

As a rule, the IP Code 178.2 shall apply governing works of joint ownership. The rights of the joint authors will be governed by the rules on co-ownership. If the work of joint authorship can be “used separately and the author of each part can be identified”, the author of each part shall be the owner of the copyright he has created.

It is also possible for several faculty members to create a “collaborative work” (IP Code 171.2). It is a work created by two or more natural persons with the understanding that it will be disclosed by one of them under his name and that contributing natural persons will not be identified. The authors will have to agree on copyright ownership, otherwise IP Code 178.2 may apply.

5. Do they have to have formal agreement in terms of contributions?

In the instance cited in Item 4 above, it is highly recommended that they have a formal agreement before they start creating the work of joint ownership. The agreement will define their intention and ownership over the work contributed.

6. Can a learning material be reused in another course pack by another faculty member even without consent from the author?

No.

If the “use” amounts to reproduction, publication, distribution, translation or adaptation, rental, public performance, etc., without consent from the author, of the whole or substantial portion of the learning materials, these acts constitute an infringement of the author's copyright; and also the copyright of third party authors whose works are contained in the learning materials.

7. Does this mean that faculty members cannot share their course packs with other SUCS or higher education institutions as part of UP's public service mandate?

Faculty members may share their syllabi or study guides. As to course packs that are deemed to have originality, the University encourages the **voluntary** sharing of such course packs with other SUCs and Higher Education Institutions provided that 1) appropriate action was taken on copyrighted materials incorporated in the course pack; 2) the course pack is vetted by the unit; and 3) its authorship is properly attributed to the faculty authors. Faculty members who do so are effectively waiving their copyright.

The University is encouraging its faculty to use open educational resources (OERs) and is also contributing (OERs).

Since 2015, UPOU has shared its open education resources (OERs). In particular, the UPOU Networks (<https://networks.upou.edu.ph/>) serves as an online repository of all UPOU-produced multimedia resources, including OERs, publications, web-streamed lectures/presentations/seminars/university events, radio, and podcasts. A detailed list of these multi-media OERs, currently numbering well over 700 titles, is available on <https://www.up.edu.ph/wp-content/uploads/2020/08/List-of-UPOU%E2%80%99s-Open-Educational-Resources-2.pdf>, for your perusal.

The UPOU MODeL (<https://model.upou.edu.ph/>) is the official platform of the UPOU massive open online courses (MOOCs),

Meanwhile, TVUP, the University's Internet TV network, is a multimedia production center, resource center, an OER repository, and a distribution/publication system that delivers free content for information and educational purposes. TVUP has produced more than 400 programs — documentaries, award winning short films, lectures and panel discussions by the country's top scientists, artists, and experts in various fields — that can be accessed on tvup.ph and <https://www.youtube.com/channel/UCgHMBsUeTBqZyG8dkGbbVKQ>. Its productions can be viewed and downloaded by all for free with open license.

The System Remote Learning Committee has also launched the UP System's website for remote learning at <https://sites.google.com/up.edu.ph/gear-up-for-remote-learning/home?authuser=0> which contains curated materials for the use of faculty, staff and students. The curated OERs constitute a living document that grows as new materials are added.

8. What constitutes a violation of a copyrighted work?

There is violation of copyright when third parties perform or do any of the exclusive rights of a copyright owner without the latter's permission, consent or license.

The rights exclusive of a copyright owner include: reproduction, publication, distribution, translation or adaptation, rental, public performance, etc. of a protected work. (IP Code 177)

Hence, any unauthorized reproduction, publication, distribution, translation or adaptation, rental, public performance, etc. of a protected work constitutes a violation of a copyrighted work.

9. What will happen when students or faculty members need to access a thesis/manuscript designated "for room use only?" Will there be a way around it?

We have to review the subscription license if "room use" can be qualified to mean remote access but with protection measures; example, time bound, limited number of access, appropriate notice to students etc. Assistance from the University Library of the CU may be sought for this.

10. If you use research papers (or excerpt from them), ideally you ask permission from the authors. What if you cannot reach them, would it be okay just to properly cite them?

Quoting excerpts from protected works and citing the author of the quoted material constitute fair use. If the act constitutes fair use, there is no need to ask permission from the authors. However, an author has a moral right to be attributed ownership of the work he created (IP Code 193).

The underlying question is how much material was copied or used and whether such copying is fair use. The four factors to determine fair use will have to be applied. If it does not fall under fair use, it will be necessary to contact and ask permission from the authors.

The four factors in determining fair use:

- a. Purpose (charitable v. commercial use)
 - b. Nature of the work (less protection for facts quoted v original literary phrase)
 - c. Amount or substantiality of the copied portion (excerpt v entire book)
 - d. Effect of the copying/ use on the potential market of the work; value, etc.(no longer create a need for a professor or student to purchase the book in the market)
- (IP Code 185)

11. If a faculty is given an honorarium by the university for course pack development, does the university own the course pack?

If the honorarium is a consideration for the work done by way of commissioned work, yes. In this case, ownership pertains to limited copies of the course pack covered by the honorarium and not over the copyright. (IP Code 181)

However, the honorarium for course packs in the First Semester AY 2020-2021 is given in consideration of the work that most faculty members have to do for their students but will be doing for the first time at the height of the COVID-19 pandemic. It is not an honorarium for commissioned work.