
University Copyright Policies

What Professors Need to Know



Gwendolyn Bradley Facilitator

AAUP Director of External
Relations



Simar Ahluwalia

UCI Law Certified Law
Student

UCI Intellectual Property,
Arts, and Technology Clinic



Erica Row

UCI Law Certified Law
Student

UCI Intellectual Property,
Arts, and Technology Clinic



Jack Lerner

Assistant Clinical Professor
of Law

Director, UCI Intellectual
Property, Arts, and
Technology Clinic

Aaron Nisenson

Aaron Nisenson is AAUP senior counsel.



AAUP Statement on Copyright, 1999

- “Institutions of higher learning in particular should interpret and apply the law of copyright so as to **encourage the discovery of new knowledge** and its **dissemination** to students, to the profession, and to the public.”
- “Within that tradition, it has been the prevailing academic practice to **treat the faculty member as the copyright owner** of works that are created independently and at the faculty member’s own initiative for traditional academic purposes.”



Relevant Law: Copyright Act of 1976

- Normally the creator of the work owns the copyright
- Exception: Work Made For Hire (17 U.S.C. §101)
 - (1) works “**prepared by an employee within the scope of his or her employment,**”
or
 - (2) **specially ordered or commissioned** for certain types of uses where the parties agree in writing that the work shall be considered a Work Made For Hire, but only with respect to certain kinds of works.
Eligible works include:
 - **an instructional text,**
 - **a test, or**
 - **answer material for a test**

Relevant Law: Copyright Act of 1976

Teacher exception to the work made for hire doctrine: University professors retain ownership of course materials and scholarly works.

AAUP's Statement on Copyright re: Work Made For Hire

“In the case of traditional academic works [] the faculty member rather than the institution determines the subject matter, the intellectual approach and direction, and the conclusions. This is the very essence of academic freedom.”

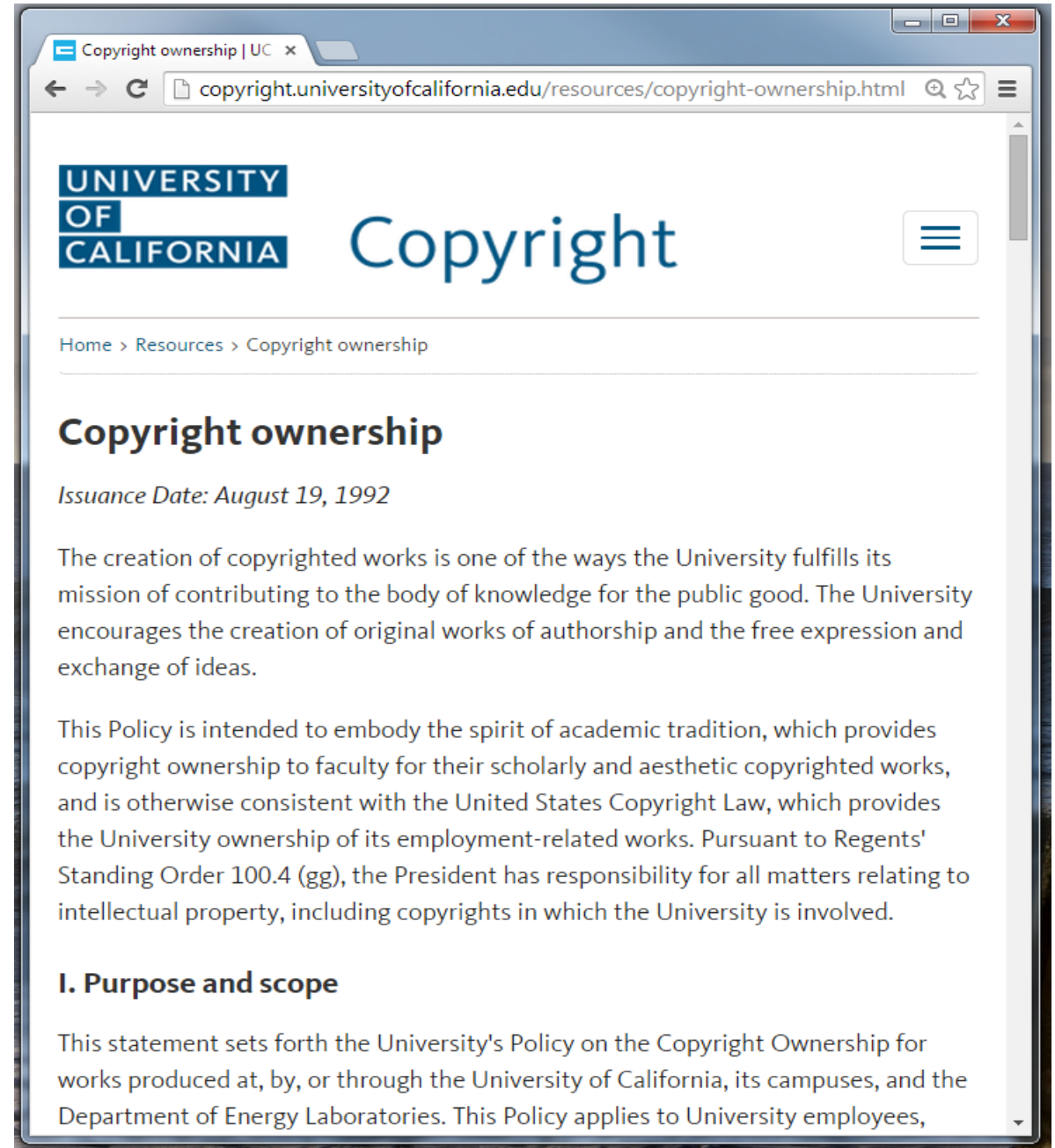
Relevant Law: Copyright Act of 1976

- **Transfer of Ownership**

Under section 204(a), transfers are only valid where an “instrument of conveyance, or note or memorandum of the transfer, is in **writing** and **signed by the owner of the rights conveyed** or such owner’s duly authorized agent” (emphasis added).

University Copyright Policies

Govern copyright ownership and licensing of works created by professors



The screenshot shows a web browser window with the URL `copyright.universityofcalifornia.edu/resources/copyright-ownership.html`. The page features the University of California logo and the title "Copyright". A breadcrumb trail reads "Home > Resources > Copyright ownership". The main heading is "Copyright ownership", followed by the issuance date "August 19, 1992". The text explains the University's mission and the policy's intent to align with academic tradition and US Copyright Law. A section titled "I. Purpose and scope" begins with the statement: "This statement sets forth the University's Policy on the Copyright Ownership for works produced at, by, or through the University of California, its campuses, and the Department of Energy Laboratories. This Policy applies to University employees,"

University Copyright Policies

Current Trends

- Disclaim copyright ownership to **scholarly works, personal works, and artistic creations**
- Most include “**substantial use**” provisions
- Some allow professors to keep the copyright to the **online course materials**
- Most policies grant the university a **broad license** to use professor-owned work

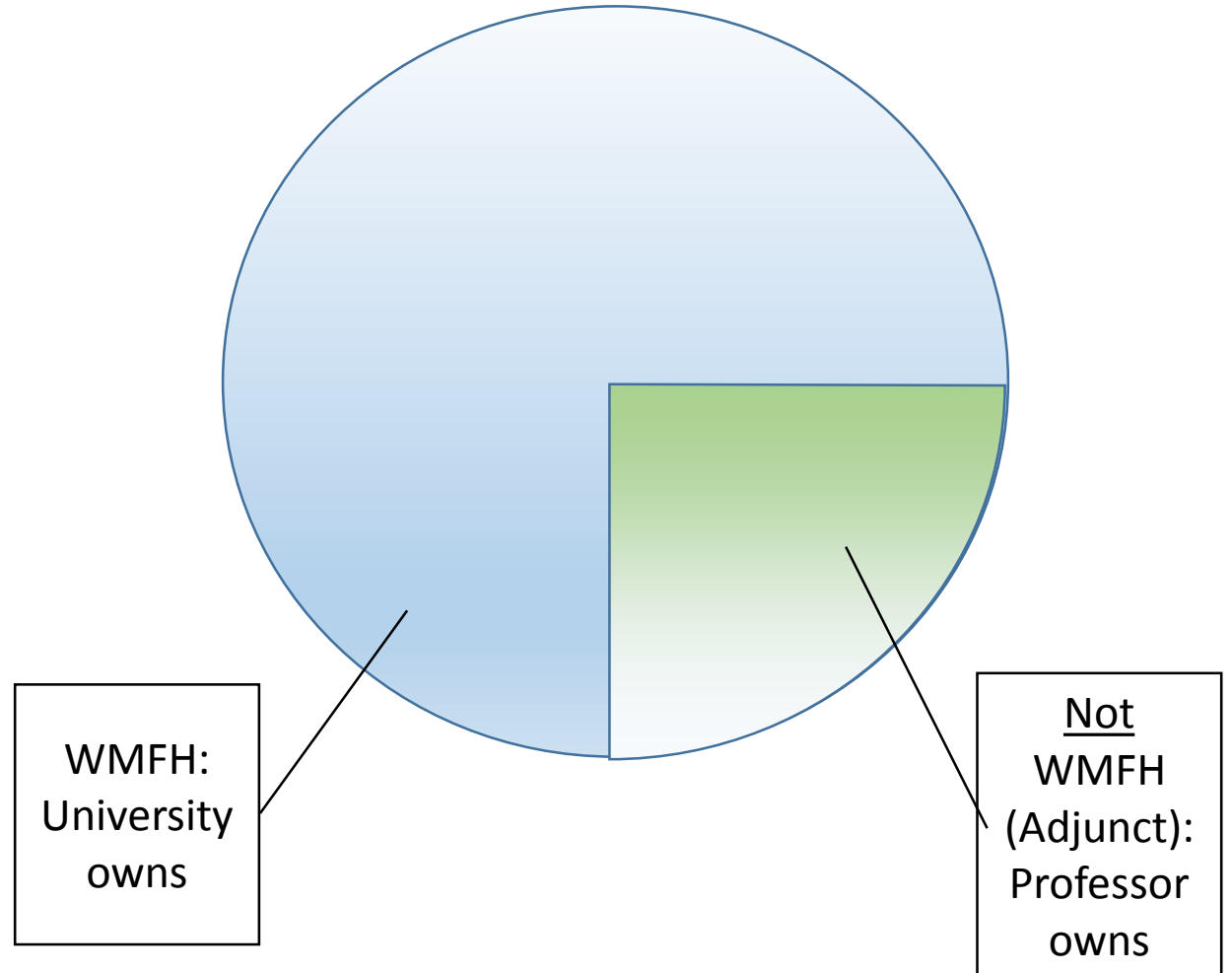
Factors Determining Copyright Ownership



Copyrighted works
professors create

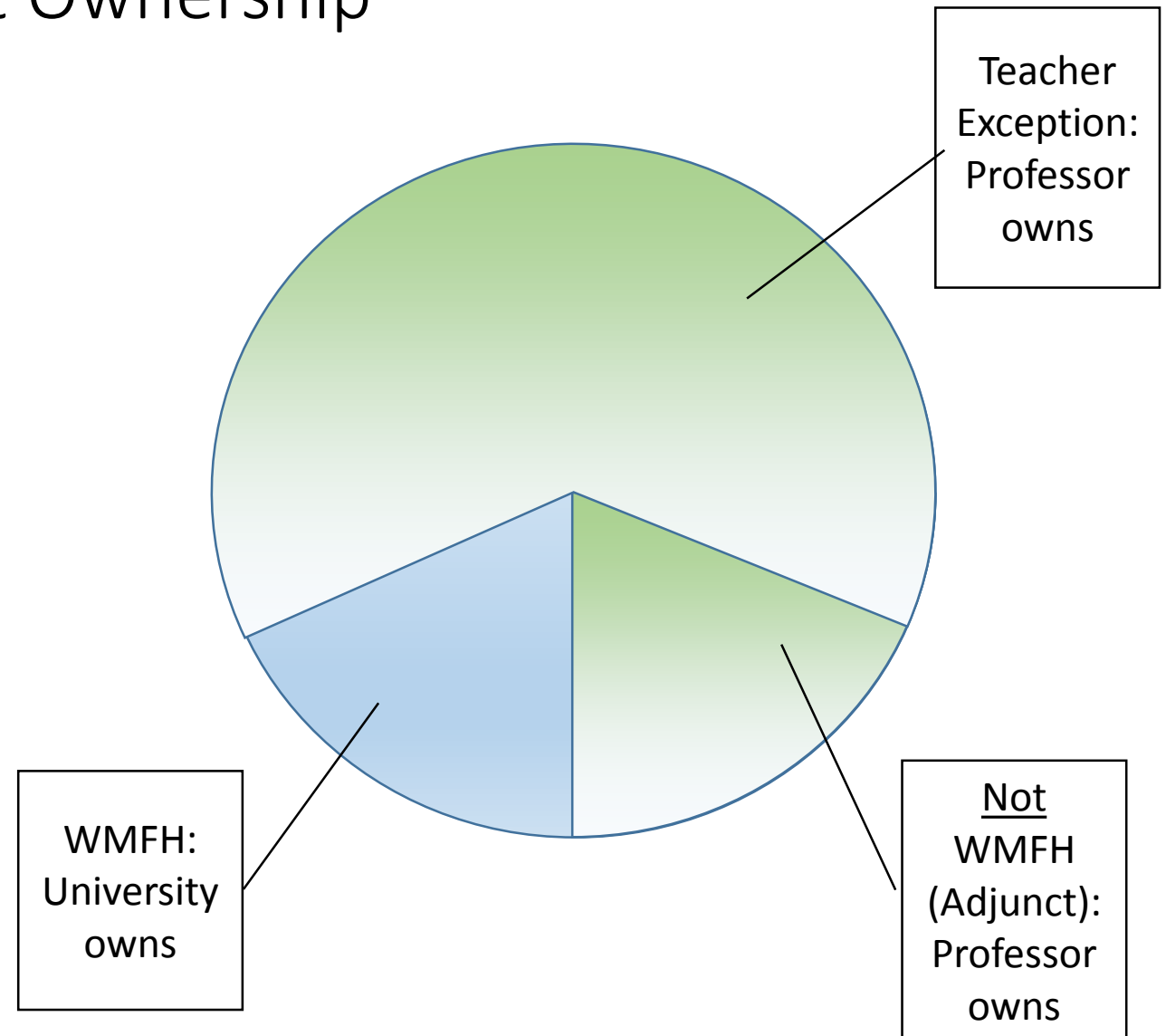
Factors Determining Copyright Ownership

- Professor creates copyrighted work.
 - Professor is an employee.
WMFH
 - Professor creates copyrighted work. Professor is an adjunct.
NOT WMFH.



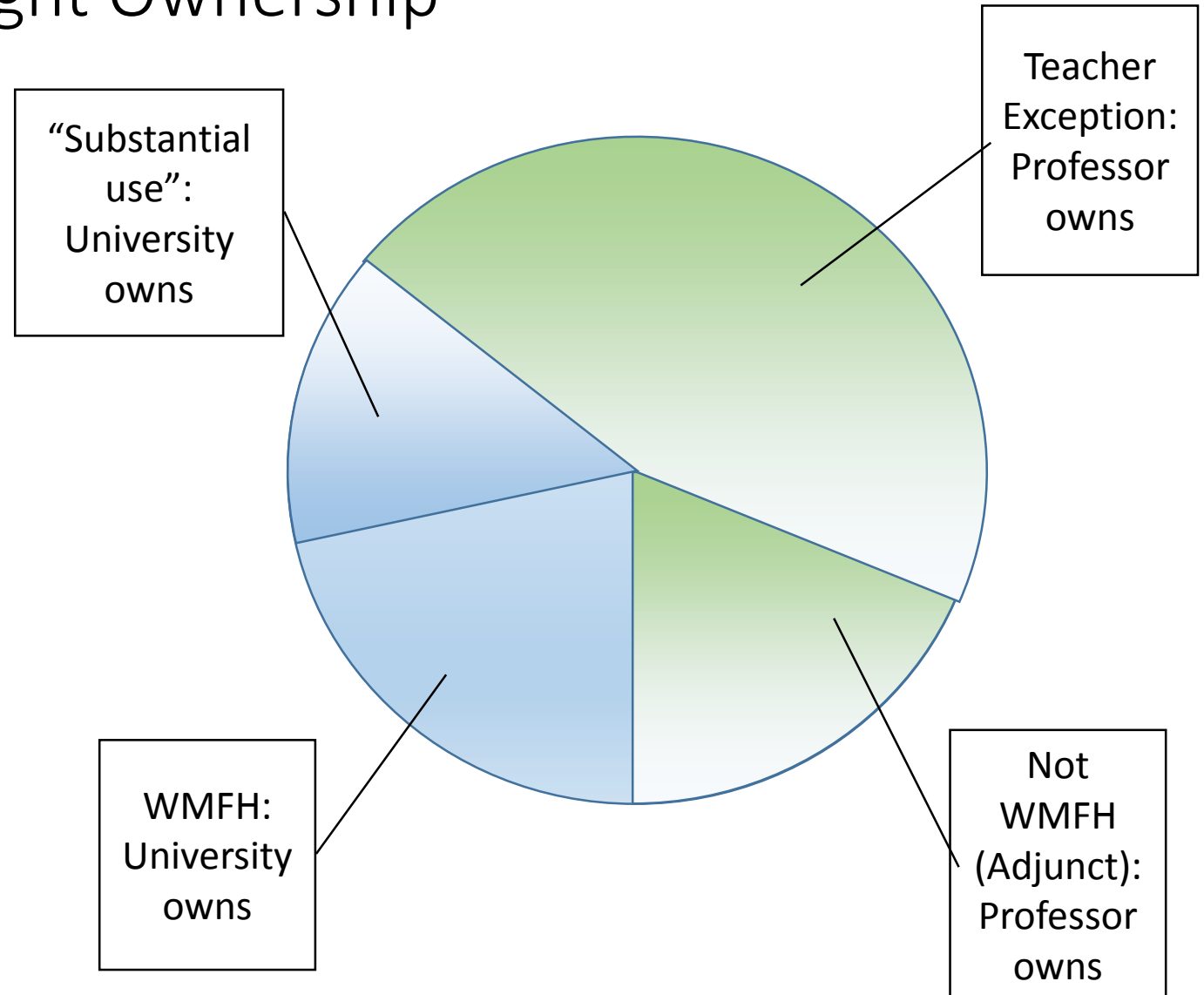
Factors Determining Copyright Ownership

- Professor creates copyrighted work.
 - Professor is an employee.
WMFH
 - Professor creates copyrighted work. Professor is an adjunct.
NOT WMFH.
- **TEACHER EXCEPTION** applies to scholarly works, course materials even if employee



Factors Determining Copyright Ownership

- Professor creates copyrighted work.
 - Professor is an employee.
WMFH
 - Professor creates copyrighted work. Professor is an adjunct.
NOT WMFH.
- TEACHER EXCEPTION applies to scholarly works, course materials even if employee
- Professor uses \$100 million cell splicer for research.
“SUBSTANTIAL USE”?



Ownership versus Use

Issues:

- What can university do with the work?
- What if professor leaves?
- Duration of university's license to use the work?
- University influence over scholarship & teaching
 - “Substantial use” approvals
 - Transfer from university to professor

Issue: Substantial Use of University Resources

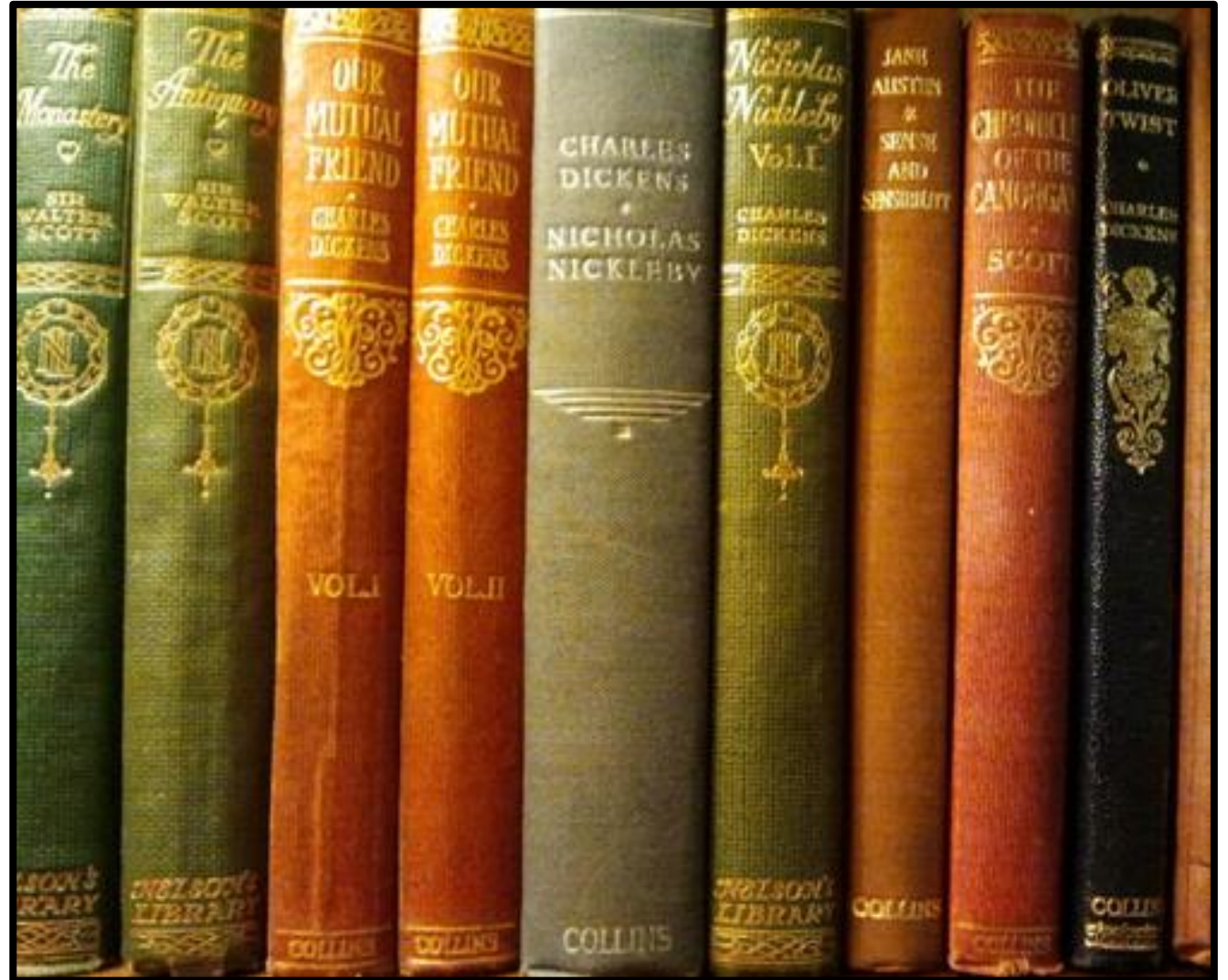
- “extra college support”
(Curry College)
- “resources beyond those usually customarily provided”
(Maryland)
- “in excess of the usual support generally available to similarly situated faculty members”
(University of California)



Issue: Substantial Use of University Resources

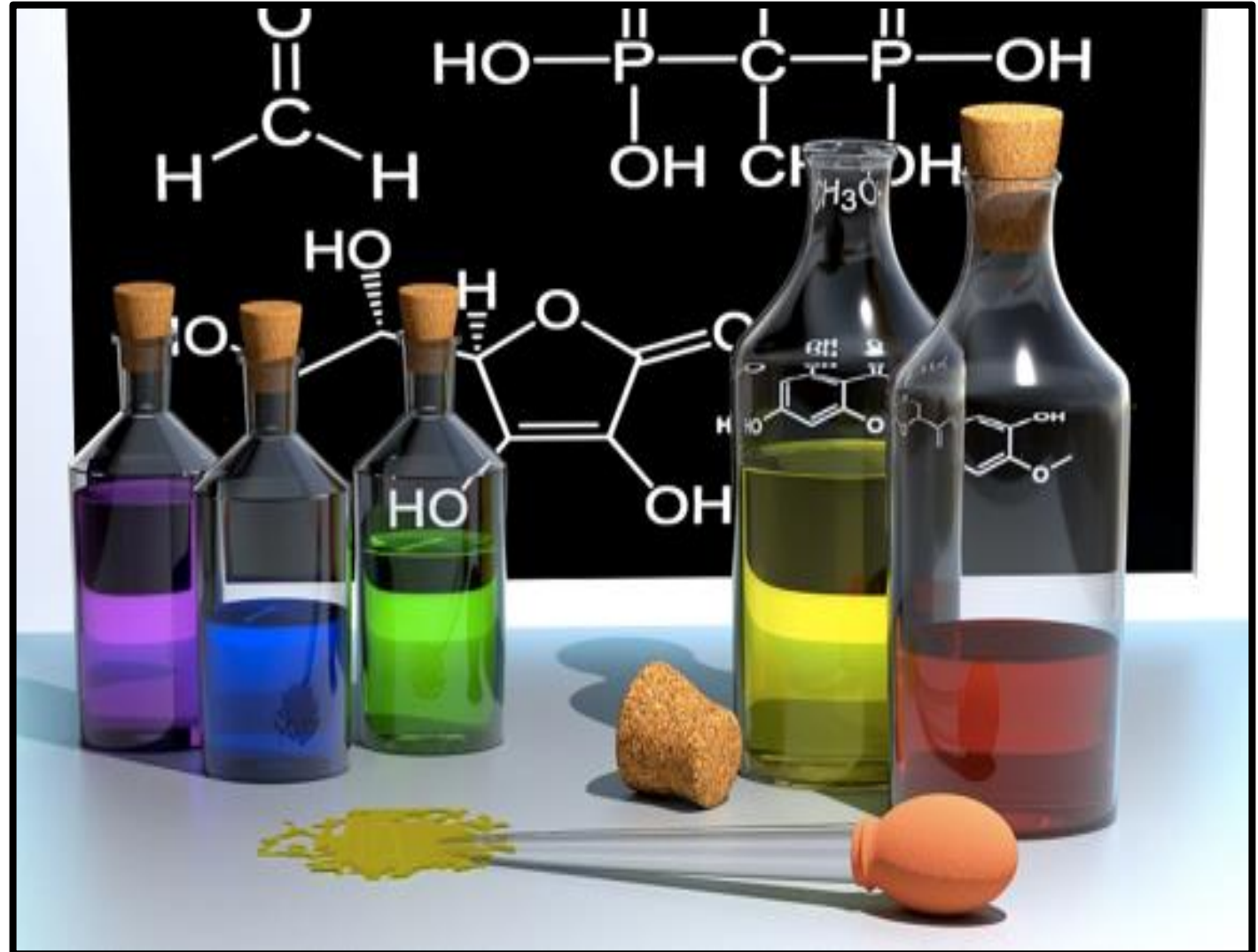
Hypothetical 1A:

- Humanities department professor
- Using research assistants and a chemistry lab



Issue: Substantial Use of University Resources

- Hypothetical 1B:
 - Professor in chemistry dept.
 - Writing article using gene sequencer (\$100 million)



Issue: Substantial Use of University Resources

Best Practice: Define policy terms **in favor of professor ownership**

- Define terms **narrowly**
- Policies should **clearly and explicitly** state procedures for using substantial resources
- A **separate written agreement**

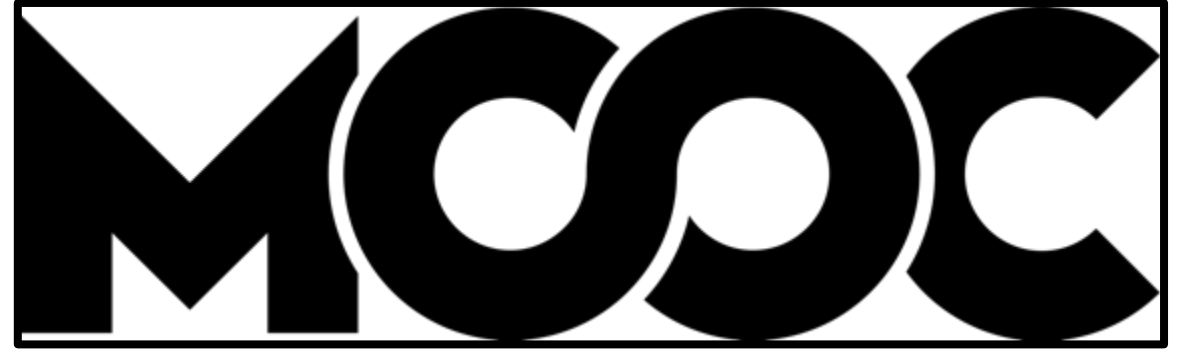
Issue: Disclaiming versus Transferring

- Some university copyright policies “**disclaim**” ownership of traditional works.
- Other policies **transfer** to the university, or vice versa.



Issue: MOOCs and Distance Education

- AAUP's [Statement on Online and Distance Education](#):
 - “As with all other curricular matters, the faculty should have primary responsibility for determining the policies and practices of the institution in regard to distance education.”



Issue: MOOCs and Distance Education

Hypothetical #2:

- University professor creates an online course
- Professor leaves university for another institution
- Who gets the course?



Issue: MOOCs and Distance Education

Best Practices:

- Ownership should be **expressly addressed** in policy.
- If university owns copyright, professors should be granted **perpetual license** to teach the course, and **attribution rights**.
- University should **notify** professors when it makes changes to the course.

Overall Best Practices

Define policy terms in favor of academic freedom and professor autonomy

- Define “substantial use” provisions **narrowly**.
- Properly effectuate **transfers** of copyright ownership **instead of “disclaiming”** ownership.
- Copyright ownership of MOOC/online education/distance education materials should be **expressly addressed** in the copyright policy and the **professor should retain the copyright** to such materials.

AAUP Policy Statements

- [Statement on Copyright](#). 1999.
- [Statement on Online and Distance Education](#). 1999.
- [Statement on Intellectual Property](#). 2013.
- [Defending the Freedom to Innovate: Faculty Intellectual Property Rights After Stanford v. Roche](#). 2014.

AAUP Legal Analysis

[Legal Round-Up: What's new and Noteworthy for Higher Education?](#)

[AAUP Amicus Briefs.](#)

[Copyrights and Wrongs.](#)

[Intellectual Property, Faculty, and Unions.](#)

[Faculty Rights and Responsibilities in Distance Learning.](#)

[Distance Learning and Intellectual Property: Ownership and Related Faculty Rights and Responsibilities.](#)

Other AAUP Resources

- [AAUP Toolkit: Intellectual Property at Risk](#). Includes fact sheets, sample legislation, amicus briefs, and other resources as part of our campaign to protect intellectual property rights.
- [Sample Distance Education Policy & Contract Language](#).
- [Sample Intellectual Property Policy and Contract Language](#).
- [AAUP-CBC Contract Database](#). The AAUP-CBC maintains a database of faculty collective bargaining agreements, some of which address copyright or distance education.
- **All are on the web at <http://www.aaup.org/issues/copyright-IP>**

Questions?

www.aaup.org