

Protection of a Faculty Member's Interest in Class Lectures.

Lecture notes have been offered for sale to students for many years. In some cases, professors themselves have sold copies of their notes. At least one university has reportedly entered into a concession arrangement with a note taking service for the campus. More often, the notes have been sold by individuals or business concerns such as book stores. Recently, the Internet has introduced the potential for making lecture notes available for profit with very little financial investment. Since the notes are offered to students who download the computer files and print the notes themselves, there is no inventory to maintain, aside from the computer files through which the notes are delivered. In addition to offering lecture notes for sale via downloads, some sites offer lecture notes for download without charge with site advertising providing income.

Some universities, such as Cornell and the University of Minnesota, have responded to the unauthorized sale of class lecture notes by implementing explicit policies that prohibit students from copying or transmitting their class lecture notes for compensation or for commercial purposes without the approval of the faculty member. Some of these policies require that the faculty member's syllabus put students on notice of the prohibition. As an exception to their general prohibition of copying or transmitting class lecture notes, such policies may permit sharing of notes with fellow students. Enforcement of these policies may occur through the university's student conduct or academic integrity code. Such enforcement raises the possibility of a wide variety of sanctions, including suspension or expulsion. Even in the absence of explicit policy provisions regarding unauthorized use of class lecture notes, it would appear that students who make such use in violation of copyright law would be subject to sanctions under student conduct codes prohibiting unlawful conduct in general.

There are a number of legal theories that may be asserted to establish a legally protected interest in the content of class lectures. While resort to the courts is not always practical or economically feasible, theories that may be pursued include copyright, academic freedom, invasion of the right of privacy, breach of an implied contract to use the notes only for class purposes, unfair competition, and breach of confidence.

This discussion is limited to copyright, the most obvious and generally accepted theory asserted to protect the legal interest of a faculty member in his/her class lectures. It is generally the rule that, absent an agreement to the contrary or an assignment of copyright by the faculty member, any copyright in a faculty member's lectures resides with the faculty member, not with the educational institution on whose faculty he/she serves. Therefore, in most cases it is the faculty member, not the university, who possesses the right to pursue those who distribute or sell class lecture notes in violation of the faculty member's copyright.

The holder of the copyright for an original work of authorship has the exclusive right to make copies of it and to determine the conditions under which others may make copies. Verbatim class notes or recordings of class lectures constitute a copy that the faculty member has a right to prohibit or otherwise control. Copyright does not, of course, protect facts and ideas, only the original manner in which they are expressed by an author. Therefore, a summary of a

class lecture written in the student's own words would not constitute a violation of the faculty member's copyright.

A copyright may be established either on the basis of the Copyright Act of 1976 (the "Act") or, in proper cases, on the basis of common law copyright. Under the Act, federal copyright protection arises when an original work is "fixed" in a tangible medium of expression. The Act provides no federal copyright protection prior to the "fixing" of a work. Under the Act, a work is "fixed" when it is embodied in a sufficiently permanent or stable manner sufficient to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. Lectures will be fixed only if they consist of the recitation of a verbatim manuscript for the class or if they are simultaneously delivered and fixed, as by audio or video taping of a class. There is no "fixing" of the typical class lecture that is delivered from no more than an outline and that is not audio or tape recorded at the time of delivery. Accordingly, typical class lectures will not be protected by the Act.

However, this is not the end of the matter. Section 301(b)(1) of the Act provides as follows:

"Nothing in this title annuls or limits any rights or remedies under the common law or statutes of any State with respect to subject matter that does not come within the subject matter of copyright as specified by sections 102 and 103, *including works of authorship not fixed in any tangible medium of expression* (emphasis added)."

Thus, class lecture notes may be protected by state law. In at least one state, California, that protection is provided by statute. In other states, such as Alabama, any such protection will be provided by common law copyright. While there is no reported case in Alabama regarding common law copyright in lecture notes, the Alabama Supreme Court in *Clay County Abstract Co. v. McKay*, 147 So. 407 (1933) explicitly recognized the existence of the principle of common law copyright. With that recognition, Alabama would likely recognize and protect under common law the faculty member's copyright in class lecture notes as being a work of authorship not fixed in any tangible medium of expression.

In order to place students on fair notice of possible action under the Code of Student Conduct and to begin laying the groundwork for possible legal action, faculty members desiring copyright protection should place a notice similar to the following in each class syllabus and on any "class handouts" originated by the faculty member:

Copyright <Insert faculty member's name here.> <Insert year here.> All federal and state copyrights in my lectures and course materials are reserved by me. You are authorized to take notes in class for your own personal use and for no other purpose. You are not authorized to record my lectures or to make any commercial use of them or to provide them to anyone else <Insert ", other than students currently enrolled in this course," here, if so desired.>

without my prior written permission. In addition to legal sanctions for violations of copyright law, students found to have violated these prohibitions may be subject to University disciplinary action under the Code of Student Conduct.

Use of the notice set out above makes clear the limitations upon the use of any copyright interest the faculty member may have in class lectures. This notice alone should suffice to protect common law copyright in the lectures. To establish federal copyright protection, the faculty member must meet the requirement that the lectures be "fixed." The simplest and most economical way to meet that requirement would be to record each lecture using an audio tape recorder. Tapes of each class should be kept on file to establish the content of each lecture.

It should be noted that this discussion concerns only copyright implications of class lectures. Faculty members involved in original research possibly leading to patents have other concerns regarding disclosures that may be made through incorporation of the results of the research into their lectures.