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Toeing the Line to Teach Online: Legal Issues on Copyright Ownership

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Abstract

When teachers produce and upload instructional materials for online teaching, one might assume that the same teachers must be the copyright owners of such materials. Under Philippine law, however, more often it is the school—as the employer of the faculty—that enjoys the exclusive copyright and the privilege to determine through institutional policies which economic rights are vested in whom. Questions on ethics and equity have arisen from this, particularly in cases where no added compensation is given to authors of digital teaching materials stored in school-sponsored repositories. Using critical policy analysis in the context of education and power relations, this study discusses the legal implications of such rules when viewed in light of constitutional policies governing contracts, property, academic freedom, and labor-management relations. Guiding the analysis are the doctrinal and comparative methods of legal research, through which this paper explores the wider legal framework impacting copyright ownership in the academe and highlights how norms from foreign legal systems may help enhance Philippine copyright legislation. Having examined the issues, this article then proposes viable policy modifications for the consideration of legislators and institutional stakeholders.

Keywords: Academic Freedom, Blended Learning, Contracts, Copyright Law, Intellectual Property Policies, Management Prerogative, Online Teaching, UN SDG 4

1. Introduction

The importance of knowledge sharing is highlighted in the United Nations (UN) Sustainable Development Goals, particularly Goal 4 on Quality Education. Outcome Target 4.A underscores the need to attract more qualified persons to the teaching profession to help speed up development in the Global South. Emphasizing the role of education in societal development, it has been said that “the most important ideas are those that are generated in universities” (Stiglitz, 2008, p. 1697). Unfortunately, some national and institutional policies governing teacher-made intellectual property (IP) may repel rather than attract the best minds to the teaching profession. This article focuses on the issue of copyright ownership by faculty in the Philippines.

As more educators become online teachers—by choice or by necessity—they inevitably contribute to the ever-growing pool of presentation files, lectures, audio/video recordings, study guides, and other instructional materials stored in learning management systems (LMSs), shared drives, and other online repositories. Though these

materials are copyrightable as “original works” under IP law, it does not follow that the teachers automatically own the copyright in their created content (Authors Alliance, 2021). Depending on the legal system, copyright may even be vested in a juridical entity, such as a university. In Philippine law, for example, it is the school as employer that is more often legally bestowed the copyright ownership—or the right to determine who enjoys it—under Republic Act No. 8293, the Intellectual Property Code (IPC), as amended by Republic Act No. 10372.

While IP law does provide a solid basis for ascribing authorship, along with its consequent moral and economic rights, this has not prevented controversies from arising as educators and legal scholars started seeing the bigger picture of copyright in connection with regulations governing contracts, property, academic freedom, and labor-management relations (Birnback, 2009; Carlson, 2015; Garon, 2018; Hofileña, 2020; Klein & Blanchard, 2012; Pila, 2010). Questions on the scope of management prerogative vis-à-vis the right of professors to control the use of IP they created have become more persistent in the context of online teaching (Crews, 2006; Guri-Rosenblit, 2018), particularly given the possible commercial applications of digital content produced by faculty. Beyond the usual considerations of economics, however, these questions also concern ethics and equity.

The COVID-19 pandemic further complicated matters as it forced schools to adopt remote teaching approaches at first, before allowing them to transition to blended learning while retaining a significant online component (Deflem, 2021). Conforming to the new standard suddenly became the norm (Stephen et al., 2022). In the Philippines, online modes of delivery and other distance-learning strategies were implemented by colleges and universities in compliance with pandemic-related policies (Commission on Higher Education, 2020), with teachers expressing their willingness to go the extra mile to provide educational content for their students (Cabauatan et al., 2021).

As the effects of the pandemic on the education sector now abate, teachers continue to upload recorded lectures and other digital instructional materials as part of the blended learning modality. Given that copyright ownership issues are expected to persist, this study underscores the legal controversies, elucidates on their theoretical roots, and proposes ways to achieve more equitable outcomes for educators.

2. Method

This article adopted a critical policy analysis approach in the context of education and power relations (Apple, 2019) between the faculty and their employers. As discussed by Diem et al. (2019), critical policy analysis tends to focus on five concerns, and two of these pertain to “the policy, its roots, and its development” as well as the “social stratification and the broader effect a given policy has on relationships of inequality and privilege” (p. 6). In this work, policies embodied in the IPC that determine copyright ownership of digital instructional materials were examined using a combination of doctrinal legal research, which correlates textual inferences from various legal materials (Van Gestel, 2023), and comparative legal research, which evaluates parallels in the legal norms of at least two different jurisdictions (Van Hoecke, 2015). Such policies, as well as the moral and economic rights associated with them, were analyzed in relation to superior policies and rights guaranteed by the Philippine Constitution to show the wider framework of rules governing educators and academic institutions. In the process, the study clarified the meanings and underlying principles of such rules, considered criticisms on how copyright ownership of teaching materials was determined, and offered ways to address identified problem areas. Furthermore, it highlighted similarities and differences between copyright policies in Philippine law and their counterparts in other jurisdictions, examined how other states have handled similar controversies, and drew out possible solutions to local issues based on the practices observed in foreign legal systems.

Sources of data consisted primarily of the official text of the Philippine laws being analyzed, particularly copyright legislation and relevant constitutional provisions on contracts, property, academic freedom, and labor-management relations. The legal discourse was further enriched by reference to related statutory enactments, jurisprudence from Supreme Court decisions, relevant international covenants, scholarly writings, and authoritative commentaries on IP law and policy. As the study had no human participants and obtained its data entirely from publicly available documents, no ethics clearance was necessary.

3. Analyzing the legal framework

“In the digital world, everything is a copy, and is potentially subject to the control of copyright owners” (Khong, 2021, p. 105). This statement puts in proper context the whole theme of this paper. When professors produce instructional materials for sharing in the school-sponsored drive or LMS, do they retain control over how their works will be stored after uploading? When they share video recordings of their academic lectures on YouTube and later start earning income from sponsored ads, can they claim exclusive copyright ownership over such lectures? If they wish to reuse their presentation materials in paid engagements outside of their own institutions, are they entitled to do so without any legal obstacles?

Under Philippine law, the copyright owner basically controls if and how the work may be used after its creation. Article XIV, Section 13 of the 1987 Constitution declares the State’s commitment to “protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations,” especially those that are valuable to society. Complementing this mandate are Article 721 of the Civil Code (1949), which recognizes “intellectual creation” as a mode of acquiring ownership of property, and Section 177 of the IPC (1997), which grants various economic rights in favor of a copyright holder, such as reproduction, transformation, first distribution, rental, and public performance, in addition to the author’s moral right to proper attribution (Gepty, 2019).

The work created need not even be noteworthy; the legal requisite of “originality” mainly means “that the work is an independent creation of the author” (Aquino, 2014, p. 25) and was “not just copied from another work” (Sta. Maria et al., 2022, p. 49). Nonetheless, it must be stressed that independent creation alone does not determine originality, as jurisprudence likewise requires at least a minimal level of creativity and aesthetic value in the work. The doctrines laid down in *Ching v. Salinas* (2005) and *Olaño v. Lim Eng Co* (2016) are instructive.

Legal protection to authors is consistent with the Philippines’ commitments under the International Covenant on Economic, Social and Cultural Rights (1966), particularly Article 15 which states that everyone has the right to “benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.” This also aligns with Article 8 of the World Intellectual Property Organization (WIPO) Copyright Treaty (1996), which provides in part that “authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.” The provision protects works in the digital environment and complements Section 193.2 of the IPC that allows authors to withhold publication of their creations.

However, the author of the work may not be the copyright owner, legally speaking. If the work was produced in connection with its author’s “regularly-assigned duties” as an employee, then the employer is normally considered as the copyright owner under Section 178.3 (b) of the IPC. Applied to instructional materials, this would imply that schools—not professors—presumably own all the educational outputs produced by the latter in their capacity as employees of the former (Hofileña, 2020). This position is strengthened when viewed in relation to the academic freedom of the institution, which is likewise guaranteed by the 1987 Constitution (Article XIV, Section 5). Such institutional academic freedom has been consistently held in Philippine jurisprudence to include the right of the school to decide based on academic grounds who will teach, who will be taught, what will be taught, and how it will be taught (Terrado & Aquino, 2020). In the landmark case of *Garcia v. The Faculty Admission Committee, Loyola School of Theology* (1975), the Philippine Supreme Court referred to such rights as “the ‘four essential freedoms’ of a university.” Hence, a professor’s regularly-assigned duties are primarily determined by the school in relation to the latter’s freedom to dictate how work will be rendered by its academic staff.

There was thus no question that when higher education institutions (HEIs) were forced to deal with COVID-19 pandemic restrictions, school administrators—in the exercise of institutional academic freedom—had the right to decide how lessons would be taught remotely to students. They determined that e-learning was an acceptable mode

of instructional delivery (Cabauatan et al., 2021; Perrin & Wang, 2021). It was far from ideal, and many felt inadequately prepared to properly implement it (Watermeyer et al., 2021) but it was considered a viable alternative (Jain et al., 2020). Most of all, it was their call to make.

Professors who were not quite ready and willing to transition to internet-based teaching found themselves with no choice but to comply, as their employers wielded management prerogative to maximum effect. Such power has been defined by the Philippine Supreme Court as the employer's right "to regulate, according to their discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations..." (*St. Luke's Medical Center, Inc. v. Maria Theresa V. Sanchez*, 2015).

As class instruction shifted from onsite delivery to online delivery in line with the "flexible learning" mode mandated in Commission on Higher Education Memorandum Order No. 4, Series of 2020, the faculty found themselves producing teaching materials in digital formats for easier sharing with their students. Directed by their school administrators, many professors started storing copies of their recorded lectures and synchronous class sessions in their school's official online repository. Systems that had applied mainly to open distance learning (ODL) under Republic Act No. 10650 of 2014, such as development of instructional materials in digital formats, suddenly became part of the new norm in higher education. These developments were hardly surprising, as recent research had already predicted that universities would "exert greater control over academics to ensure uniformity and regulation of changes to teaching and assessment" (Watermeyer et al., 2021, p. 631).

In recent years, many institutions already transitioned to blended learning—a mix of face-to-face instruction and remote delivery, with much of the latter being done online (Zhang & Zhu, 2017). According to Perrin and Wang (2021), "the future seems to be with blended or hybrid learning" (p. 472). With new educational materials being created and uploaded by academic staff, the question is once again asked: Who owns the copyright in all these materials? Generally, the law recognizes the actual creator of the work as the copyright owner. But when the actual creator happens to be an employee who produced the work as part of regularly-assigned duties, then the law presumes that the employer is the copyright owner. This rule applies similarly to employees of educational institutions, though in this particular context the copyright ownership would be primarily determined by institutional IP policies—which, at the discretion of the HEI, may provide for exclusive ownership by either the employer or the employee, or shared ownership by both.

4. Comparing copyright laws

The Philippine rule providing for employer copyright ownership somehow echoes the United States Copyright Act of 1976, which states in similar language that the copyright in an employee's work created within the scope of the employment contract belongs to the employer (Garon, 2018). This is often referred to as the "Work-for-Hire" doctrine that vests copyright ownership not in the actual creator of the work but in the person or entity employing such creator (Blanchard, 2010). It seems to be a typical feature in Anglo-American copyright law, given that a variation of this rule exists in the Copyrights, Designs and Patents Act of 1988 of the United Kingdom (Gadd & Weedon, 2017; Rahmatian, 2015).

The main legal theory behind this doctrine is "because the creativity and originality of the project flows directly from the employer, the employer is the true author of the work" (Hill, 1989, p. 561). It has been argued that "when an employee-author prepares a work for hire he is waiving his moral rights by waiving his ability to assert full creative control over the work" (Hayes, 2000, p. 1029). In other words, this theory assumes that the employer's power over the employee makes the employer both the author and the copyright owner of the employee's works produced within the scope of employment duties. While this rule does not perfectly accord with Philippine copyright law—which recognizes the separate rights of the employee as author and the employer as copyright holder over the same works—it helps clarify the basis for the ownership guideline in Section 178.3 (b) of the IPC.

Another theory presupposes that since the employer is in a better position to exploit the work commercially and share its benefits with the rest of society, then the employer generally must be considered as the default copyright holder (Birnhack, 2009). This is meant to "put decisions on disseminating, revising, or building on works in the

hands of the entity that will maximize creative value” (Dreyfuss, 2000, p. 1202). After all, copyright law exists “not only to reward innovation but to disseminate knowledge for the public good” (Blanchard, 2010, p. 66) because society “will greatly benefit from the abundance of literary and artistic works” (Bernardo, 2021, p. 58). Or, in the words of Aquino (2014): “There are, on the other hand, the interests of the general public that should be ultimately served by the products of the ingenuity and creativity of members of the human family” (p. 12).

Such declarations find support in Article XII, Section 6 of the 1987 Constitution: “The use of property bears a social function, and all economic agents shall contribute to the common good.” In turn, Section 2 of the IPC reiterates this constitutional provision as a State policy: “The use of intellectual property bears a social function. To this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good.”

It is worth noting that before the amended Copyright Act of 1976 took effect in the United States, an older law had already codified the rules on works made for hire. Under the Federal Copyright Act of 1909, the term “author” was said to include “an employer in the case of works made for hire” (Blanchard, 2010, p. 62). However, as the “Work-for-Hire” doctrine evolved in American jurisprudence in the early 20th Century, U.S. case law started recognizing a “Teacher Exception” rule that bestowed copyright ownership upon the faculty insofar as their teaching materials were concerned. Apparently, some U.S. courts saw it fit to treat educators differently from other employees producing copyrightable materials for the benefit of their employers (Strom, 2002). As discussed by Deflem (2021), one of the landmark rulings can be found in *Williams v. Weisser*, a 1969 case where the professor’s ownership of his class lectures was upheld.

Nevertheless, when the Copyright Act of 1976 reworded the 1909 statute, the newer law did not provide for any “Teacher Exception” rule to temper the sweeping language of the “Work-for-Hire” doctrine that still applied to works created by employees. This in turn led to two diverging legal interpretations, as observed by Blanchard (2010) and Garon (2018). One is that by not incorporating the “Teacher Exception” rule in the 1976 law, American legislators had indirectly declared that teachers should be treated like all other employees; hence, teachers should not enjoy copyright ownership over their works, unless otherwise agreed with their school administrators. The other interpretation is that since the 1976 statute did not categorically abandon the old “Teacher Exception” rule that had evolved in American case law, then the exception still stands.

Philippine jurisprudence has no equivalent for the “Teacher Exception” rule applicable to instructional materials. However, Section 178.3 (a) of the IPC does provide that copyright would belong to the employee “if the creation of the object of copyright is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer.” This rule is not subject to contrary stipulation allowing the employer to own the copyright.

Another exception is provided in the same law: Notwithstanding the fact that the work was created in relation to regularly-assigned duties, the copyright will belong to the employee if there is an express or implied agreement to this effect, as stated in Section 178.3 (b). The Philippine Supreme Court has characterized freedom of contract as “both a constitutional and statutory right” (*Rodolfo Morla v. Corazon Nisperos Belmonte*, 2011). It is protected under Article III, Section 10 of the 1987 Philippine Constitution and is likewise guaranteed by the Civil Code (1949). Article 1306 of this Code provides that “the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.” Such agreed terms will have the force of law between both parties, obliging their compliance in good faith (Article 1159, Civil Code). Applied to copyright ownership, this means an employer may waive the benefit of Section 178.3 (b) of the IPC by stipulating in the employment contract or in any separate contract that copyright ownership would pertain to the employee-author instead (Hofileña, 2020).

It is also possible to incorporate this waiver in a collective bargaining agreement (Klein & Blanchard, 2012) or in school policy manuals (Garon, 2018). The disadvantage in the latter, however, would be in the control exercised by the school over the crafting and revision of such manuals (Laughlin, 2000). Nevertheless, having such policies is mandatory, given that Section 230 of the IPC, as amended by Republic Act No. 10372 of 2013, requires all

schools to “adopt intellectual property policies that would govern the use and creation of intellectual property with the purpose of safeguarding the intellectual creations of the learning institution and its employees...”

As previously expounded, both Philippine and American copyright laws are founded upon principles that uphold employer ownership as a rule whenever original works are produced by an employee within the scope of employment duties. Copyright ownership by the employee is considered as the exception to the rule, availing only in certain instances.

In contrast, German law is more empowering for the employee-author (Birnhack, 2009) as it vests copyright ownership in the actual creator of the work, any employment contract notwithstanding. As observed by Carlson (2015), “German law does not recognize any equivalent to the ‘work-made-for-hire’ doctrine as under the United States Copyright Act” (p. 388). Unlike Anglo-American law, German law typically settles the issue of copyright ownership in teaching materials in favor of the faculty, leaving only the question of whether universities have a license to exploit such materials by virtue of the employer-employee relationship.

It is also worth mentioning that while German copyright law, like its Philippine counterpart, recognizes that some authors do produce copyrightable works in the fulfillment of their employment duties, under German rules such circumstances only create an implied grant of a license to the employer but do not designate the employer as the copyright owner by default. Thus, while a university may insist that it has a license to exploit the teaching materials created by its faculty as part of the latter’s duties as employees, it cannot consider itself as the copyright holder of such original works. As emphasized by Carlson (2015): “Only a natural person can be the author of a work, as only individuals are capable of bringing intellectual creations into being” (p. 387) and thus under German IP law, only a natural person may own the copyright in something created by the intellect. An artificial person may be given a license to use the copyright for its own benefit, but the ownership of copyright generally cannot be separated from the true author. This is where the German copyright system clearly diverges from those of the Philippines, the United States, and the United Kingdom. While Section 171.1 of the Philippine IPC similarly defines an author as “the natural person who has created the work,” the same law allows the copyright ownership to be enjoyed from the start by a juridical entity employing the actual creator of the work.

5. Blending ethics and equity with economics

The main criticism against the sweeping language of Section 178.3 (b) of the IPC is that it puts all employees in the same box. The IPC simply assumes employer copyright ownership in all works of employees created in the performance of the latter’s regularly-assigned duties. No exception is recognized for works created by faculty, even if most teachers are compensated primarily to render in-person teaching service and not to produce recorded lectures and similar outputs (Rahmatian, 2015).

Where faculty employment contracts do not specify that teachers are obliged to create digital instructional materials for the benefit of their employer, schools can still find a way around this limitation by invoking management prerogative and institutional academic freedom, both of which allow them to reasonably modify the regularly-assigned duties of their teaching staff. Section 230 of the IPC even fortifies these norms by empowering schools to adopt institutional IP policies without requiring them to consult with their stakeholders first.

While the law does allow for employee copyright ownership by way of exception, it still upholds the employer’s ownership as the general rule when works are created by an employee in connection with regularly-assigned duties. The clause in IPC Section 178.3 (b) allowing employees to own the copyright in their work only when there is an agreement to that effect fails to seriously consider that employees “do not stand on equal footing” with their employer (*Julita M. Aldovino v. Gold and Green Manpower Management and Development Services, Inc.*, 2019). In light of this lack of bargaining power on the part of the employee (Hill, 1989), it may be said that Section 178.3 (b) lacks harmony with labor law and jurisprudence, favoring as it does the party that is already favored from the start: the employer. Indeed, given “the strong economic position and high bargaining power of employers” that negate the employment agreement as “a true contractual bargain” (Shahrilnizam et al., 2015, p. 228), it is less likely that an employer would propose any contract shifting the copyright to the employee-author or even allowing

for joint ownership by both parties. The overbearing authority of the employer in this set-up is still reminiscent of the pre-industrial relationship of master and servant, which could hardly be called a contract (Tomassetti, 2023).

Furthermore, the theoretical underpinnings of the Anglo-American laws on copyright ownership—as mirrored in Philippine copyright law—do not seem to align with present-day realities in teaching. For one, the academic practice of allowing faculty to determine the specific methods of course delivery (Deflem, 2021) casts serious doubt on the legal fiction that “the creativity and originality of the project flows directly from the employer” (Hill, 1989, p. 561). Indeed, why should the school be the exclusive owner of the work if the teacher was the one who conceptualized, produced, and uploaded it for student consumption? This is “unjust and defies common sense” (Pila, 2010, p. 6). As Tomassetti (2023) had pointed out, the theory of employer ownership seems to have evolved from the time when everything that the servant produced was attributed to the master—which should not apply to instructional materials created by faculty, owing mainly to the latter’s distinguished position as content experts in their own disciplines.

Even the presumption that the employer is in a better position to exploit the work commercially to allow society to benefit from it (Birnhack, 2009) is no longer accurate. Given the ubiquity of social media technology, content creators can now share their work with global audiences and monetize their content through online platforms without having to rely on the resources of their employer. A decade ago, Vie (2015) found that 21st-Century teachers were already more open to integrating YouTube and Facebook in their instruction. If today’s teachers happen to produce and upload academic lectures in their own social media accounts not just for their current students but for all their subscribers and followers, should their employers have control—as copyright owners—over how such materials are used?

Also, if schools automatically owned the copyright in all teaching materials created by their faculty, would this mean that all derivative rights—such as the right to publish a book or compendium based on faculty lectures—belong not to the actual lecturer but to the school employing such lecturer? Such questions must be asked, considering that copyright ownership and the exercise of related rights in the academe are mainly governed by each institution’s IP policies. As long as such institutional policies do not contravene law or public policy, then they will “govern the use and creation of intellectual property” in the school setting and may be enforced consistently with the mandate of Section 230 of the IPC.

The boundaries for traditional teaching were clearer during the pre-pandemic era, when universities normally just allowed academic staff to determine for themselves how best to teach their own students (Perrin & Wang, 2021). Under this system, institutional academic freedom empowered the school to dictate the course outcomes, grading system, and basic class policies. However, the specific teaching approaches were usually left to the discretion of the individual faculty members (Burr, 1990), who could even decide to “enter the classroom without teaching aids and conduct the class orally” (Carlson, 2015, p. 359). Hence, professors could choose if they would allow their lectures and teaching materials to be reproduced or stored in any repository (Laughlin, 2000). Their typical duties included meeting their classes face-to-face, delivering instruction efficiently, providing appropriate assessments, and submitting grades (Guri-Rosenblit, 2018). Recording lectures and producing specific course materials for uploading in an LMS or shared drive were probably expected of distance educators but were arguably not the norm for most other academic staff.

As classes shifted to the virtual space, however, onsite teachers suddenly became online teachers, and their job description likewise morphed into one that necessitated the creation of significantly more copyrightable content for student consumption (Authors Alliance, 2021). Given further that such content was produced in the performance of regularly-assigned duties, a presumption thus arose that the school owned all of it from the moment of creation (Strom, 2002)—particularly in the absence of any school policy or contractual stipulation declaring otherwise.

Thus, with the simple issuance of a memorandum directing teachers to upload their recorded lectures and other instructional materials in an online repository, administrators were able to considerably increase the number of intangible assets owned by their school without necessarily having to compensate the teacher-authors for the

additional work done. The teachers' enjoyment of just and favorable conditions of work, and in particular, of remuneration that constitutes fair wages under Article 7 of the ICESCR (1966), thus became a matter of rhetoric. Carlson (2015) underscored the need to take note of this trend: "As teaching materials become more and more digitally manageable, even to the extent of virtual classrooms, the issue of rights takes on radically different legal as well as financial values" (p. 358). Ethical considerations likewise come to the fore.

IP rights are "essential assets for universities" (Patil & Sagar, 2024, p. 8628). Copyright in academic work is intellectual property, and property has economic value (Pila, 2010; Strom, 2002). Whoever owns the copyright generally enjoys the economic rights, regardless of who the actual creator of the work happens to be (Laughlin, 2000). In the case of faculty-authored digital instructional materials, there is no question that the production of such copyrighted works is related to the teaching job (Rahmatian, 2015). Thus, one might presume that the school, as employer, would probably own the copyright based on Section 178.3 (b) of the IPC, particularly if institutional IP policies affirm this.

Considering, however, that digital instructional materials are often produced by faculty for no additional compensation, it does not seem equitable to designate the school as sole owner by default, given the works' potential for commercial use. It would be relevant to aver how the 1987 Philippine Constitution recognizes "the right of labor to its just share in the fruits of production" as the State regulates labor-management relations (Article XIII, Section 3). This is complemented by the State policy to "protect and secure the exclusive rights of scientists, inventors, artists and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people," as provided by Section 2 of the IPC.

Likewise, Article XIII, Section 3 of the Constitution guarantees the right of employees to go on strike whenever the legal requisites of Article 278 of the amended and renumbered Labor Code (1974) are satisfied. However, in cases of unfair labor practices or collective bargaining deadlocks when teachers vote to go on strike, the main objective of paralyzing school operations might not be attained if school administrators could simply hire substitute faculty to re-deploy previously uploaded teaching materials of striking faculty to ensure instructional delivery during the work stoppage. The criticism of Birnhack (2009), though pertaining primarily to Anglo-American copyright law, seems apropos to the current state of Philippine copyright law regarding the disconnect between intellectual property law and labor law: "Employment law is strikingly absent from this discourse as well as the economic understanding of copyright law" (p. 99).

6. Recommendations

Hofileña (2020) believes the Philippine Congress should "clarify the ownership of IP created in a university setting" (p. 96). This appears to be the best solution, given the unequal bargaining power that exists between schools and their faculty, which makes it less likely that institutionally crafted IP policies or contracts of adhesion prepared by schools will provide a more equitable arrangement between the parties. Rules governing instructional materials in digital formats are particularly needed at this time when uploading presentations and recorded lectures has become a common practice of educators. The following alternatives are thus proposed for the consideration of lawmakers.

First, amend Section 178.3 (b) of the IPC to provide for shared copyright ownership (Crews, 2006) between the school and the teacher-author of all materials created for online teaching within the scope of the employment contract. This must likewise be echoed in Section 230 of the IPC, which mandates that school policies on IP should safeguard the intellectual creations of "the learning institution and its employees" given how such works can be a significant income source for both schools and teachers (Dio et al., 2015). According to the Intellectual Property Office of the Philippines (2019), creators of works are in fact motivated by both "moral and material benefits" (p. 7). Joint ownership of economic rights may thus be warranted, though this is expected to complicate the way owners of shared copyright enjoy such rights (Dreyfuss, 2000; Margoni & Perry, 2012). Nonetheless, Hayes (2000) justifies this set-up in lieu of sole ownership by the employer in cases where the actual creator would have been the copyright owner if not for the employment relationship; hence, the existence of such relationship must not "divest the employee-author" (p. 1030) of corresponding rights in the work.

Beyond economic considerations, shared copyright ownership is expected to motivate teachers to improve the quality of their instructional materials. Faculty involvement will require devoting more time and energy, but equitable IP policies will encourage teachers to “achieve things for the attainment of the common goals” (Dio et al., 2015, p. 70). Innovative teaching will become the standard. There will be a constant incentive to create, cooperate, and disseminate educational materials (Dreyfuss, 2000) not just for the benefit of enrolled students but possibly also for the development of the larger community outside the school (Dio et al., 2015). This can enhance institutional reputation even as it supports teacher retention and promotes knowledge diffusion.

Assuming the legislature would still prefer to retain copyright ownership in the schools as employers and maintain their full freedom in the crafting of institutional IP policies, another option would be to grant a compulsory license to the faculty-authors, allowing them to explore both educational and commercial applications for their works without directly competing against their employer and without tarnishing the reputation of their school. Teachers must be permitted to find ways to monetize their extra efforts for their own benefit. Otherwise, it would be only fair to oblige schools to provide additional compensation (Dreyfuss, 2000) to teachers who create digital materials that automatically become school property according to institutional IP policies.

Making teachers sole copyright holders by default based on the “Teacher Exception” rule from old American case law may be advantageous for some academics but may also weaken institutional support for others. Though this is considered a less radical shift than adopting the German standard that makes copyright inseparable from the actual creator of the work—irrespective of any employer-employee relationship existing and regardless of the academic or commercial nature of the engagement (Carlson, 2016)—it is admittedly an option that requires sufficient safeguards to protect the interests of schools. Should legislators be inclined to adopt this as the new rule on copyright ownership of digital instructional materials, it is recommended that the law grant a compulsory license in favor of the school, allowing it to store and reuse teaching materials in certain instances (Laughlin, 2000) but not during a lawful work stoppage by the faculty.

Meanwhile, Philippine schools need not wait for legislative action before they review their internal rules and revise them to reflect more equitable terms for their academic staff. As gathered from foreign literature (Authors Alliance, 2021; Campbell, 2019; Carlson, 2015; Gadd and Weedon, 2017; Garon, 2018; Loggie et al., 2006; Pila, 2010;), the copyright laws of the U.S. and the U.K. grant sufficient freedom to HEIs in the crafting of policy manuals governing ownership of academic material. In turn, this flexibility has given rise to several policy variations, ranging from exclusive ownership by one party to joint ownership by employer and employee, with all the permutations of licensing and assignment of rights spelled out in different combinations (Authors Alliance, 2021). And yet at times, faculty are not even aware of such policies when they commence employment (Campbell, 2019). Other times, contradictory institutional guidelines give rise to conflicts requiring court intervention (Patil & Sagar, 2024).

Considering that the Philippine situation is not much different, then local schools should take the initiative to revisit their institutional IP policies and reword them accordingly, bearing in mind that “the effectiveness of any educational policy or practice is directly related to the capacity of that policy or practice to increase individual involvement” (Dio et al., 2015, p. 70). Institutions that have not yet complied with the directive of Section 230 of the IPC should now adopt their own IP policies, properly blending principles of economics with norms of ethics and equity. For this purpose, they may be assisted by the Intellectual Property Office of the Philippines through training provided by its Documentation, Information, and Technology Transfer Bureau.

From their end, faculty unions must be more proactive in pushing for the inclusion of copyright ownership in the collective bargaining agenda. “However, within the realm of the evolving digital world where new questions of copyright ownership arise, recognize that faculty members will not necessarily own everything” (Strom, 2002, p. 12). Shared ownership would be a good start, and clarifying the matter in a ratified collective bargaining agreement is better than relying entirely on the school’s sense of fairness in its adoption and future revision of institutional IP policies (Birnhack, 2009). But even if negotiations eventually fail to shift the status quo on ownership of instructional materials, union representatives may still wield sufficient influence to convince school administrators

to reconsider internal rules that restrict faculty rights (Authors Alliance, 2021). After all, management prerogative can be tempered not only by law and contract, but also by changes in employer policy and practice encouraged by fundamental principles of justice and fair play (Tabingan & Gonzales Dhum, 2022).

7. Conclusion

There is a reason why the 1987 Philippine Constitution requires the largest budget allocation for education: True progress can only be attained with an educated citizenry. Similarly, UN Sustainable Development Goal 4 affirms the important role of quality education in societal development, especially in Global South countries. This implies, however, that the main resource in the formal education system—the faculty—would be accorded proper rights and benefits in return for their services, particularly when they are required to go beyond the normal call of duty. When traditional teachers are enjoined to become content creators uploading instructional materials for the benefit of their students, they deserve more than just a pat on the back or a word of thanks. They deserve credit for their work and at the very least a compulsory license allowing them to control how their outputs are used and possibly recycled. Arguably, they deserve copyright ownership, either exclusively under the “Teacher Exception” rule or jointly with their employers. Of course, they can attain any of these through collective bargaining agreements or separate contracts with their schools, or even through the latter’s magnanimity in the crafting and subsequent amendment of institutional IP policies. Nonetheless, the surest way is still legislation. At this crucial time when the IPC is undergoing review for revision by the Philippine Congress, the norms articulated in Section 178.3 (b) and Section 230, as well as the institutional IP policies arising from them, need to be revisited and possibly rewritten to reflect more ethical and equitable terms for teachers.

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References

- Apple, M. (2019). On doing critical policy analysis. *Educational Policy*, 33(1), 276-287. <https://doi.org/10.1177/0895904818807307>
- Aquino, R. (2014). *Intellectual property law: Comments and annotations*. Central Book Supply, Inc.
- Authors Alliance (2021). *FAQ: Copyright ownership & online course materials*. Creative Commons.
- Bernardo, M. (2021). When copyright and COVID-19 collide: Controlled digital lending, fair use, and reprographic reproduction by libraries in the age of remote learning. *Philippine Law Journal*, 94(Special Online Feature), 57-74.
- Birnhack, M. (2009). Who owns Bratz? The integration of copyright and employment law. *Fordham Intellectual Property, Media and Entertainment Law Journal*, 20(1), 95-163.
- Blanchard, J. (2010). The Teacher Exception under the Work for Hire Doctrine: Safeguard of academic freedom or vehicle for academic free enterprise? *Innovative Higher Education*, 35, 61-69. <https://doi.org/10.1007/s10755-009-9124-1>
- Burr, S. (1990). A critical assessment of Reid's Work for Hire Framework and its potential impact on the marketplace for scholarly works. *Journal of Marshall Law Review*, 24(1), 119-143.
- Cabauatan, R., de Castro, B., Manalo, R., & Uy, C. (2021). Factors affecting intention to use blended learning approach in the tertiary level: A quantitative approach. *Higher Education for the Future*, 8(2), 239-255. <https://doi.org/10.1177/23476311211011934>

- Campbell, P. (2019). University inventions reconsidered: Debunking the myth of university ownership. *William & Mary Business Law Review*, 11(1), 77-126.
- Carlson, L. (2015). Academic freedom and the rights to university teaching materials: A comparison of Swedish, American and German approaches. *Juridisk Tidskrift*, 2015(2), 357-397. <https://dx.doi.org/10.2139/ssrn.2713421>
- Commission on Higher Education Guidelines on the Implementation of Flexible Learning, Memorandum Order No. 4, Series of 2020 (September 2, 2020) (Philippines)
- Crews, K. (2006). Instructional materials and 'works made for hire' at universities: Policies and strategic management of copyright ownership. In K. Bonner (Ed.) *The Center for Intellectual Property Handbook*, (pp. 15-38). Neal-Schuman Publishers. <http://dx.doi.org/10.2139/ssrn.1540811>
- Deflem, M. (2021). The right to teach in a hyper-digital age: Legal protections for (post-)pandemic concerns. *Society*, 58, 204-212. <https://doi.org/10.1007/s12115-021-00584-w>
- Diem, S., Young, M., & Sampson, C. (2019). Where critical policy meets the politics of education: An introduction. *Educational Policy*, 33(1), 3-15. <https://doi.org/10.1177/0895904818807317>
- Dio, R., Lara, H., & Ocbian, M. (2015). Factors affecting the involvement of faculty members in the development of instructional materials: Basis for policy recommendations. *Asia Pacific Journal of Multidisciplinary Research*, 3(4), 69-77.
- Dreyfuss, R. (2000). Collaborative research: Conflicts on authorship, ownership, and accountability. *Vanderbilt Law Review*, 53(4), 1159-1232.
- Epicharis T. Garcia v. The Faculty Admission Committee, Loyola School of Theology* (1975) G.R. No. L-40779
- Gadd, E. & Weedon, R. (2017). Copyright ownership of e-learning and teaching materials: Policy approaches taken by UK universities. *Education and Information Technologies*, 22, 3231-3250. <https://doi.org/10.1007/s10639-017-9583-4>
- Garon, J. (2018). Ownership of university intellectual property. *Cardozo Arts and Entertainment Law Journal*, 36(3), 635-673.
- Gepty, A. (2019). *The intellectual property law compendium*. Central Book Supply, Inc.
- Guri-Rosenblit, S. (2018). E-teaching in higher education: An essential prerequisite for e-learning. *Journal of New Approaches in Educational Research*, 7(2), 93-97. <https://doi.org/10.7821/naer.2018.7.298>
- Hayes, B. (2000). Integrating moral rights into U.S. Law and the problem of the Works for Hire Doctrine. *Ohio State Law Journal*, 61, 1013-1033.
- Hill, A. (1989). Work for Hire definition in the Copyright Act of 1976: Conflict over specially ordered or commissioned works. *Cornell Law Review*, 74(3), 559-586.
- Hofileña, D. (2020). Reinforcing the role of intellectual property in the battle against the pandemic: The Vowel Framework. *DLSU Business & Economics Review*, 30(1), 90-100.
- Intellectual Property Office of the Philippines (2019). *The National Intellectual Property Strategy (2020-2025). International Covenant on Economic, Social and Cultural Rights 1966*
- Jain, S., Lall, M., & Singh, A. (2021). Teachers' voices on the impact of COVID-19 on school education: Are ed-tech companies really the panacea? *Contemporary Education Dialogue*, 18(1), 58-89. <https://doi.org/10.1177/0973184920976433>
- Jessie G. Ching v. William M. Salinas, Sr., William M. Salinas, Jr., Josephine L. Salinas, Jennifer Y. Salinas, Alonto Solaiman Salle, John Eric I. Salinas, Noel M. Yabut (Board of Directors and Officers of Wilaware Product Corporation)* (2005) G.R. No. 161295
- Julita M. Aldovino, Joan B. Lagrimas, Winnie B. Lingat, Chita A. Sales, Sherly L. Guinto, Revilla S. De Jesus, and Laila V. Orpilla v. Gold and Green Manpower Management and Development Services, Inc., Sage International Development Company, Ltd., and Alberto C. Alvina* (2019) G.R. No. 200811
- Khong, D. (2021). Copyright exceptions for the Digital Age: A comparative study in Malaysia and the Philippines. *Asian Comparative Law*, 1, 105-119.
- Klein, M. & Blanchard, J. (2012). Are intellectual property policies subject to collective bargaining? A case study of New Jersey and Kansas. *Texas Intellectual Property Law Journal*, 20, 389-425.
- Laughlin, G. (2000). Who owns the copyright to faculty-created web-sites?: The Work-for-Hire Doctrine's applicability to internet resources created for distance learning and traditional classroom courses. *Boston College Law Review*, 41(3), 549-584.
- Loggie, K., Barron, A., Gulitz, E., Hohlfeld, T., Kromrey, J., Venable, M., & Sweeney, P. (2006). An analysis of copyright policies for distance learning materials at major research universities. *Journal of Interactive Online Learning*, 5(3), 224-242.
- Margoni, T. & Perry, M. (2012). Ownership in complex authorship: A comparative study of joint works in Copyright Law. *European Intellectual Property Review*, 34(1), 22-32.
- Patil, U. & Sagar, S. (2024). Analyzing the legal framework for intellectual property commercialization in Indian higher education institutions: A doctrinal study. *Educational Administration: Theory and Practice*, 30(4), 8627-8632. <https://doi.org/10.53555/kuey.v30i4.2798>

- Perrin, S. & Wang, L. (2021). COVID-19 and rapid digitalization of learning and teaching: Quality assurance issues and solutions in a Sino-foreign higher education institution. *Quality Assurance in Education*, 29(4), 463-476. <https://doi.org/10.1108/qaec-12-2020-0167>
- Philippine Constitution of 1987*
- Pila, J. (2010). Who owns the intellectual property rights in academic work? *European Intellectual Property Review*, 2010, 609-613.
- Presidential Decree No. 442 (Labor Code, as amended and renumbered) 1974 (Philippines)*
- Rahmatian, A. (2015). University academics as employees and creators of copyright works: University academics as owners of copyright? *European Intellectual Property Review*, 37(6), 355-358.
- Republic Act No. 386 (Civil Code) 1949 (Philippines)*
- Republic Act No. 8293 (Intellectual Property Code) 1997 (Philippines)*
- Republic Act No. 10372 (an Act amending the Intellectual Property Code) 2013 (Philippines)*
- Republic Act No. 10650 (Open Distance Learning Act) 2014 (Philippines)*
- Rodolfo Morla v. Corazon Nisperos Belmonte, Abraham U. Nisperos, Perlita Nisperos Ocampo, Armando U. Nisperos, Alberto U. Nisperos, Hilario U. Nisperos, Archimedes U. Nisperos, Buenafe Nisperos Perez, Arthur U. Nisperos, and Esperanza Urbano Nisperos (2011) G.R. No. 171146
- Shahrilnizam, M., Balakrishnan, P., & Murshamsul, M. (2015). Employer's managerial prerogative right: An evaluation of its relevancy to the employer-employee relationship. *Pertanika Journal of Social Sciences and Humanities*, 23(S), 227-238.
- Sison Olaño, Sergio T. Ong, Marilyn O. Go, and Jap Fuk Hai v. Lim Eng Co (2016) G.R. No. 195835
- St. Luke's Medical Center, Inc. v. Maria Theresa V. Sanchez (2015) G.R. No. 212054
- Sta. Maria, M., Cruz, C., San Juan, M., Tan, C., & Amarnani, R. (2022). The concept of originality and creativity in the humanities, the social sciences and the natural sciences. *Asia-Pacific Journal of IP Management and Innovation*, 1(1), 37-50.
- Stephen, S., Wilder, W., & Thomas, H. (2022). The role of support systems towards employee resilience: The case of private educators in Kota Kinabalu, Sabah. *Journal of BIMP-EAGA Regional Development*, 8(1), 36-44.
- Stiglitz, J. (2008). Economic foundations of intellectual property rights. *Duke Law Journal*, 57, 1693-1724.
- Strom, D. (2002). *Intellectual property issues for higher education unions: A primer*. AFT Higher Education, a Division of the American Federation of Teachers.
- Tabingan, M. & Gonzales Dhum, M. (2022). *Labor laws*. Central Book Supply, Inc.
- Terrado, L. & Aquino, D. (2020). *Legal issues in education*. Central Book Supply, Inc.
- Tomassetti, J. (2023). Managerial prerogative, property rights, and labor control in employment status disputes. *Theoretical Inquiries in Law*, 24(1), 180-205. <https://doi.org/10.1515/til-2023-0010>
- Van Gestel, R. (2023). Quality, methodology, and politics in doctrinal legal scholarship. *Law and Method*, (January 2023), 1-24. <https://doi.org/10.5553/REM/000070>
- Van Hoecke, M. (2015). Methodology of comparative legal research. *Law and Method*, (June 2015), 1-36. <https://doi.org/10.5553/REM/000010>
- Vie, S. (2015). What's going on: Challenges and opportunities for social media use in the writing classroom. *Journal of Faculty Development*, 29(2), 33-44.
- Watermeyer, R., Crick, T., Knight, C., & Goodall, J. (2020). COVID-19 and digital disruption in UK universities: Afflictions and affordances of emergency online migration. *Higher Education*, 81(3), 623-641. <https://doi.org/10.1007/s10734-020-00561-y>
- World Intellectual Property Organization Copyright Treaty 1996*
- Zhang, W. & Zhu, C. (2017). Review on blended learning: Identifying the key themes and categories. *International Journal of Information and Education Technology*, 7(9), 673-678. <https://doi.org/10.18178/ijiet.2017.7.9.952>