

Subject: Course Hero Memo and Take Down Notice

From: Jane Fernandes <jfernand@unca.edu>

Date: Fri, 26 Feb 2010 17:07:29 -0500

Colleagues,

At yesterday's meeting, Provost Arden brought up the question of CourseHero and what has been done about it. As I mentioned, I am sending you the memorandum I sent to UNC Asheville faculty regarding CourseHero along with a template faculty may use in communicating a take-down notice. Both of these documents were vetted by the GA Legal Department after a determination that the best recourse was for faculty to act individually to protect their intellectual property. The template is also available on the UNC Asheville intellectual property web site at:

http://www.unca.edu/copyright/Course_Hero_take_down_notice.doc

By way of background, early last semester, UNC Asheville faculty members Sam Kaplan and Ed Johnson contacted our university counsel, Tom Lawton, to see if there was any legal recourse regarding their original course materials being posted without their knowledge or permission on the Course Hero website. In consulting with Mr. Harrison, we were successful in getting CourseHero to take the UNC Asheville logo off their materials as a trademark issue. However, the individual faculty issue was much more complicated and we concluded that the best recourse was for individuals to file their own take-down notice. As Judith Wegner mentioned, we have also taken seriously the need to discuss this with students as a matter of integrity.

The most expert person on our campus regarding this problem is Jim Kuhlman who can be reached at: kuhlman@unca.edu Feel free to contact him if you wish.

Warm regards,

Jane

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Dear Colleagues,

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Many of you may already be familiar with [Course Hero](#), a web site describing itself as “. . . an inquiry-based learning network that attracts thousands of college students, educators and self-learners every day to publish, share and collaborate on academic resources online.” It is further self-described as “. . . an inquiry-based learning approach whereby a student submits an inquiry (e.g., Why is the sky blue? What are different explanations of the chain rule for Basic Calculus, etc.), and Course Hero provides a highly organized result consisting of documents (the "Course Hero Response") contributed by students & educators.” You might think of Course Hero as an academic [YouTube™](#) where you can view course handouts, syllabi, and other course materials.

Recently, UNC Asheville faculty have discovered copies of their course material, complete with UNC Asheville logos, available on the Course Hero site without their prior knowledge or permission. If you visit the Course Hero site, you'll find that you can search by state (NC), then institution (UNC Asheville), and then by course prefix. Quite a few of our faculty's course materials are posted there.

At the request of those discovering faculty and with the assistance of UNC General Administration legal counsel, UNC Asheville investigated the efficacy of the University's requiring Course Hero to not display course materials from our University. That inquiry indicates that such effort would prove ineffective and lack legal basis.

The following statement from the [Course Hero web site](#) states that:

. . . users may only upload materials that (i) they own or possess rights to, (ii) constitute their own unique presentation of commonly available facts or (iii) are free from copyright or other protections altogether. Put simply, we do not want copyrighted or protected materials posted on our site without permission. Unfortunately, as is the case with any site that hosts user-generated content, some users ignore this restriction and upload copyright infringing material. In addition, it is our policy to respond to clear notices of alleged copyright infringement. Pursuant to the Digital Millennium Copyright Act of 1998, as amended, if Course Hero receives proper notification from a copyright holder claiming that certain material posted on Course Hero allegedly infringes their rights (see <http://www.coursehero.com/copyright.php>), then Course Hero will expeditiously remove or disable access to any such allegedly infringing material pending investigation. Course Hero will also terminate the accounts of any users who repeatedly post other's work to the site without permission.

As you probably know, “traditional works” created by UNC Asheville faculty without the use of “exceptional university resources” and without supervisory direction (e.g., journal articles, books, computer programs, art, etc.) belong exclusively to the creator (see UNC Asheville [“Copyright Use & Ownership Policy”](#)). As Course Hero states in the passage above, the responsibility for ensuring that the person who uploads the course materials owns the rights to do so rests upon the person who does the uploading. Course Hero is protected under provisions of the Digital Millennium Copyright Act so long as they don't monitor what gets uploaded (why they can't block all materials from UNC Asheville or any other institution and retain the safe harbor protections of the DMCA). Under the Act, they are required to block access to the allegedly infringing material when they receive “proper notification” from a copyright

holder (you in the case of your course materials). That's another reason you probably wouldn't want the University to try to resolve these issues for you. It could someday blur the legal distinction between your ownership of the course materials and any possible claim this or another University might make. Please note that Course Hero's use of the phrase "proper notification" is similar one of those impossible, tricky multiple choice questions. There are rules as to what that notification must contain and failure to provide complete information may be used to avoid taking down the infringing material. Jim Kuhlman (kuhlman@unca.edu, 251-6545) is now working with the General Administration on a blanket take-down notice that our faculty can use as notification to Course Hero. He will let us know when that is complete but in the meantime, contact Jim if you have questions or concerns.

Some immediate steps to consider:

1. Your course materials, including syllabi, are copyrighted the instant they meet two conditions:
 - a. They are original, creative work;
 - b. They are in a fixed format.
2. While NOT required for the materials to be copyrighted, the use of "© Jane Doe, 2009" or "Copyright John Smith, 2009" helps to establish for your students and whoever might be tempted to make a copy that you have some restrictions at the very least.
3. In order to sue anyone for infringement, you must have registered your work with the U.S. Copyright Office prior to bringing the suit though not necessarily prior to someone infringing your work. The earlier you register your copyright, however, the easier it will be to make the case that its your work and not that of the person you believe is infringing. See "Have a Question About Copyright Registration?" at <http://www.copyright.gov/fls/sl09.pdf> and "The Copyright Office Offers Online Registration" at <http://www.copyright.gov/fls/sl35.pdf>.
4. If you do not want your students to share or post your course materials, this may be an excellent opportunity to discuss the ethical use of information, intellectual property, etc. Your students probably have never considered your personal investment in the development of your teaching materials or the lifetime you have invested in pulling it all together. They certainly haven't considered how that material may be misused if readily available out of context.
5. Note that faculty should take care to avoid using and/or posting material online taken directly from Instructor's Guides. This material is likely owned by a publisher and/or author.

I hope this provides some general grounding and assistance. If you have question or need assistance please contact Jim Kuhlman (kuhlman@unca.edu, 251-6545), your Program Area Dean, Department chair or Program director.

Sincerely,



Jane K. Fernandes, PhD
Provost and Vice Chancellor for Academic Affairs