Universities Warn Sites Posting Class Notes

By Carl S. Kaplan

S
ome university professors and administrators have watched with alarm over the past year or so as Internet ventures have hired students on campuses across the country to take class notes and post them on free Web sites.

Now the simmering controversy may reach a boil. In the last two weeks at least two universities have sent warning letters to representatives of the online companies, claiming that note-takers are violating campus policy and infringing upon the intellectual property rights of the faculty.

Looming behind the dispute is a puzzling legal question: Is the commercial distribution of a student’s class notes a violation of the professor’s copyright? The online note-taking entrepreneurs and their lawyers insist their business is lawful, but some other experts in intellectual property are not so sure. Both sides agree that a lawsuit settling the matter may not be far off.

The latest controversy was prompted by a classified advertisement that ran in the student newspaper of the University of California at Los Angeles on October 12, reading “Earn up to $1,000 by posting your lecture notes online.” Stephen Oberhauser, a UCLA senior who posted the ad, is the campus manager for Study 24-7, a leading online note-taking company that had just begun to recruit on campus. Like other companies, Study 24-7 posts free class notes on a central Web site and makes money by selling ads on the site’s pages.

Two days after the ad appeared, John Sandbrook, assistant provost in UCLA’s College of Letters and Science, sent an e-mail to Oberhauser, warning him to stop all commercial note-taking activities immediately or face possible disciplinary action by the Dean of Students.

In his letter, Sandbrook reminded Oberhauser that UCLA has a specific campus policy regarding note-taking, and that under the rules, a student’s class notes “may not be exchanged or distributed for commercial purposes” unless this is authorized by the university in advance and explicitly permitted by the instructor. He also said that misuse of course notes could get the note-taker in legal trouble.

So far, Oberhauser has not responded to the note, but he said in an interview that he is not backing down. “I’m not too worried,” he said. “I think this is a losing battle on their part. Online notes are here to stay.”

Since the summer, Oberhauser has recruited eight student note-takers at the university who cover 11 major courses. Notes from just one class are available on the site. He said more notes are in the pipeline, but he acknowledged that some note-takers may be holding back because they are intimidated by the university’s stance.

Oberhauser pointed out that the school has authorized UCLA’s student association to operate an official note-taking service, which sells hard-copy notes.
for about 100 classes at the bookstore. “In my mind, this is all about competition for the dollar,” he said. “Now that we are offering free notes, they have some competition, and frankly they don’t like it.”

UCLA’s Sandbrook denied in an interview that his warning letter was prompted by any desire to protect the business of the authorized student note-taking service. “The issue is faculty control over what goes on in the classroom,” he said. Unlike the official service, the online note-taking services operate without faculty approval or faculty review of the notes, so their summaries may be highly deficient and a disservice to students, he said.

Sandbrook said that he recently sent a warning letter to Versity.com, another online service active at UCLA, and is planning to write to a third company, StudentU.com.

The University of California at Berkeley also has a specific campus policy against the unauthorized commercial distribution of class notes. It sent letters to the online companies in the past two weeks “notifying them of our rules and requesting they cease and desist from violating those rules,” said Mike Smith, campus counsel for the university.

Most universities do not have specific policies prohibiting the unauthorized commercial distribution of students’ class notes, said Sheldon Steinbach, general counsel of the American Council on Education, a group that represents colleges and universities. The larger question that most other schools will have to grapple with, he said, is whether notes posted online violate the copyright in the lectures that is held by the professors or the university.

Study 247, a year-old operation based in Santa Clara, California, which boasts that it posts class notes from 167 campuses across the country, was founded by Brian T. Masar and Craig A. Green. They say the riddle has an easy answer.

“We’ve been researching this issue for several years, and we are confident in the stance we’re taking,” said Green, who graduated from the University of Pennsylvania in 1997. He said he reckons that although a professor might have a property interest in the lecture that he gives, the student’s notes are the separate property and creation of the student—assuming that the notes are not a verbatim record of the lecture but rather an interpretive take on the class.

Richard Aitken, a Washington lawyer who has been advising Study 247, said a Florida case from 1996 lends some support to the company’s view. In University of Florida v. KPB Inc., a jury held that a campus note-taking service did not breach the copyrights in the individual lectures given at the university. The U.S. Court of Appeals for the 11th Circuit ruled that the jury verdict in the case was based on sufficient evidence.

But Pamela Samuelson, a law professor at Berkeley who specializes in cybrellaw and intellectual property, said that the law in this matter is still in flux, and there is a “very grey area” concerning whether a student’s class notes, distributed commercially, violate the lecturer’s copyright.

The issue comes down to the nature of student notes, she said. At the ex-
tremes, a verbatim record of a lecture would not be allowed, while a student’s wildly creative (and possibly useless) interpretation of the professor’s comments might pass muster. But in the middle, published student notes that contain “some minor variations in wording are probably not enough” to avoid a copyright problem, Samuelson said. There is a notion in law that copyright would be fairly valueless if its scope only extended to exact copies of a work, she said.

Aside from the copyright problem, Samuelson said there could also be a legal issue concerning misrepresentation if the student’s published notes totally distorted a professor’s intellectual stance, harming his reputation.

Ian C. Ballon, a lawyer who practices Internet law in Palo Alto, California, agrees that the law is unsettled, and that a legal challenge would depend on a case-by-case examination of the notes themselves. Yet the larger issue, he said, is one that is increasingly common in Internet-related disputes.

“Just as we’ve seen in cases involving private industry, the Net makes it more difficult to control information,” he said. “For universities, that has both positive and negative consequences.”