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IMPACTS OF MOOCs ON INTELLECTUAL PROPERTY RIGHTS AND COLLECTIVE BARGAINING

By Nicholas Anastasopoulos

Massive Open Online Courses (“MOOCs”) are free, online courses offered by institutions of higher education to individual users across the world, and in the vast majority of cases, without any admissions criteria. MOOCs are popular with individuals because they offer unprecedented, free access to the best institutions in the world that were previously inaccessible to the vast majority of the population—all a user needs is a computer and Internet access. College and university administrators are excited about MOOCs because of the marketing reach and additional revenues available through this medium. Professors are excited to have their lectures seen by as many people as possible. Unions must be on board, right? Not so fast. Many faculty unions take the position that MOOCs undermine faculty intellectual property rights and existing collective bargaining agreements between the union and the institution.

Faculty unions are objecting to the institution’s use of MOOCs without additional collective bargaining because of faculty ownership rights to their lectures. At most institutions, individual faculty members, and not the institution, own the intellectual property in their live lectures and course materials. Licensing agreements are entered into by the institution and MOOC platform provider (e.g. Coursera, Udacity, edX). However, prior to placing the course online, faculty members are expected to sign away their intellectual property rights to the institution and irrevocably grant the institution the right and permission to use their course content, name and image. A union’s objection is one rooted in “black letter” labor law, namely, a represented employee is typically barred from signing any individual contract with their employer. This is particularly true if it touches on a term and condition of employment, like allowing an institution to automate a task, in this case, teaching, that it would otherwise hire a member of the bargaining unit to perform. Institutions with represented faculty would be well-served to negotiate language into collective bargaining agreements, allowing individual faculty members to waive their intellectual property rights to coursework in advance of contracts with a MOOC provider. Otherwise, the institution may be faced with a demand from the union to cease implementation of the contract until such time as the institution and union reach an agreement over intellectual property ownership.

If an institution cannot negotiate language into the collective bargaining agreement ahead of time, the institution can expect negotiations to involve traditional mandatory subjects of bargaining like wages, hours and other terms and conditions of employment.

An institution can expect the union to make a series of information requests related to the contract between the institution and the online provider. The duty to furnish information is a key component of the bargaining process under the National Labor Relations Act (NLRA). An institution’s disclosure of information provides the union with the information it needs to effectively carry out its statutory obligation to represent its membership. It is important to note that information clearly related to the
employer/employee relationship will be presumptively relevant and subject to disclosure. In the case of MOOCs, a union has the right to request and review contracts between the institution and the platform provider. A violation of this employer obligation under the NLRA will likely result in an unfair labor practice charge at the National Labor Relations Board.

Once negotiations commence, many of the same items traditionally negotiated in a collective bargaining agreement will come to the surface. The union will certainly attempt to negotiate compensation for its members in exchange for their time and waiving of their intellectual property rights.

Additionally, the union will attempt to define whether some, or all, of its bargaining unit members will be eligible to participate in MOOCs.

More and more, students formally enrolled in the institution are given academic credits for completing coursework via MOOCs. As the use of MOOCs becomes more accepted, unions will negotiate language intended to protect members’ course loads, teaching opportunities and jobs. This is a particularly sensitive issue at institutions with unionized adjunct professors.

MOOCs are an exciting development in higher education. The issues described above are not insurmountable at the bargaining table but should be anticipated and planned for by institutions in order to ensure a smoother transition into MOOC learning.

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