

## **Gross Intellectual Property: The Moral Challenges of Ownership in the Digital Age**

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### **ABSTRACT:**

Katherine Gross, full-time non-tenure track Lecturer in the mathematics department at St. Ignatius University was a hard-working academic who wanted more. Striving for tenure, she tried every may to make herself indispensable to the administration, faculty, and students at St. Ignatius. When an opportunity arose to create a fully online class in Calculus 1, Katherine took the opportunity. Paid for the development of the course in a separate contractual arrangement with the university, Katherine ended up creating something special. Over the course of the first year teaching students through the online course, Katherine became adept at meeting the challenges of her students through what she called the “Gross Method”. Working on a per course basis at a neighboring university, Katherine used much of the course she developed and taught with at St. Ignatius University for a class at Eastbrook University. Swift action was taken to prevent further use of her materials. Katherine was met with a cease and desist order from St. Ignatius, explaining that she was using their property to profit herself and another competing university. Floored but realizing a sense of powerlessness, Katherine was clear in her own mind that something was not quite right given her employment status, the ongoing development of the course, and the use of her image in the course videos, yet, what could she do if she wanted to remain employed and thrive at St. Ignatius?

Keywords: intellectual property, contractual employment, just compensation, gig worker.

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## INTRODUCTION

Katherine Gross is a math professor. Having completed her Ph.D. at the University of Maryland in 2010, Katherine applied for several tenure-track jobs in math departments around the country. She interviewed for a number of positions over the ensuing years and kept hoping for the big break she was looking for, a tenure track job at a college or university that would provide her with the financial security and stability that academia promised. Katherine was fascinated by mathematics, solving complex problems, and sharing in the life of the mind with students in her classrooms. She was doing what she was supposed to – having completed her Ph.D., she was publishing a steady stream of articles in professional journals, she was presenting at conferences, and she was continuing to develop classroom excellence. However, because of some personal issues, things had not worked out as she had hoped and planned.

Katherine was offered two tenure track jobs, one in 2012 at the University of Maine and another in 2014 at Missouri State University. Katherine, however, could not see her way clear to accept either of these positions. Katherine's mother Rose was not terribly well, Rose had no interest in moving, and so, Katherine stayed in Washington D.C. Katherine was fortunate enough to get a full-time non-tenure track position as a lecturer at St. Ignatius University, a Catholic liberal arts college, beginning in the fall of 2014, teaching sections of Calculus primarily. This job paid the bills, provided her with health insurance, and kept her dream of academia in play. Her yearly contractual renewal would continue from year to year given the need for mathematics teachers and assuming sound performance of her teaching duties and university service (See Appendix 1). While it did not offer the security and prestige of a tenure-track position, Katherine worked hard and accepted any and every service assignment that her chairperson had offered, so as to make herself indispensable. In the spring semester of 2016, Dr. Sue Desmond, the chairperson of the mathematics department, sent out an email, that asked for volunteers to develop an online course in Calculus I. While Katherine knew that online learning was not optimal for students, it was definitely part of the future of higher education, and it was an assignment that would make her more indispensable. As a result, she volunteered for the assignment gladly, signed the contract to develop an online course, spent the summer of 2016 working on her online class, and was paid a stipend of \$5,000 for developing the course (See Appendix 2). She made the course as interactive as possible so as to engage the students in a way that mimicked the classroom environment. Her class met all of the university's learning objectives and criteria. Needless to say, additional hours were spent crafting, choosing the best delivery method, and embedding animation, analytics and additional graphs to make certain that her teaching was successful.

## ONLINE LEARNING AT ST. IGNATIUS UNIVERSITY

As a traditional liberal arts school, St Ignatius was very late in developing online courses. The President, Fr. William McCoart, along with the Board of Trustees, held out on online coursework for a long time, believing that online courses violated the trust that parents put in the administration and the value of the liberal arts education. Given that St. Ignatius branded itself on the model of Socratic dialogue, how could such learning happen online? Regardless of the wisdom or foolishness of moving some courses online, the administration finally came to the conclusion in the fall of 2015, that they were losing students to other schools with online courses

but they were assuredly losing revenue due to the money that could be made and saved by adding online courses for the students they already had. Online courses could be very profitable and be added in addition to other traditional brick and mortar classes as there was no limitation about classroom space.

Beginning in the fall 2016 semester, St Ignatius would run a pilot program of 10 courses offered by professors from around the university, including the humanities, sciences, and business. The offerings would be basic core classes that would have wide appeal. The hope was that the revenue generated in the coming years would cushion the financial position of the university, especially by offering expanded winter semester and summer semester courses. Chairpersons across departments asked for volunteers to develop such courses and the first to volunteer in the math department was Dr. Katherine Gross.

The 10 pilot courses were developed by faculty members across academic disciplines. In addition to Calculus I, there would be an introductory course in biology, chemistry, philosophy, theology, political science, American history, macroeconomics, marketing, and management. The provost and academic deans decided that the 10 professors involved in the pilot program would gather weekly over the course of the summer in order to discuss challenges and difficulties with the technology, as well as to brainstorm about content and methods of simulating the classroom experience in cyberspace. Katherine's colleagues ranged in their opinions of the online learning pilot from being energetic enthusiasts to being downright curmudgeons. And yet, by the end of the summer, each had a working model course, that had been tested by academic computing as well as by two other faculty members creating such courses. The online learning pilot was up and running for students who had pre-registered earlier in the spring – the “guinea pigs” as they came to be known in the work group. Students had been allowed to sign up for one online course so as to limit any complaints from parents. St. Ignatius leaped into the future and Katherine Gross had helped give it a running start.

## **THE CLASS STRUCTURE**

Katherine was aware that the material she needed to adequately run a standard Calculus 1 class was easily amassed by simply organizing chapters and assignments from her often-used textbook. She merely needed to comb through each section of material to find the most relevant information, write a problem set, scan the match set, and upload the material on a per-class basis. Since each semester brick and mortar classes had roughly 42 class meetings (three one-hour-long classes per week for 14 weeks), she parsed out the material according to scheduled class times and wrote quizzes or tests for the non-teaching days. The process of putting together the class seemed like an easy enough task, but something felt missing. She needed to find a way to customize the material so that students saw the relevance of Calculus to their major. So, Katherine took a different tact than other on-line content creators did. She carefully planned and strategized with a fellow colleague from the Philosophy department so as to include mathematical theory from Pythagoras, Euclid, and Descartes (Cartesian Geometry). She spent time with fellow faculty members from the Finance and Engineering departments so as to include content applicable for students choosing those majors. In essence, Katherine invented the “Gross Method” for teaching Calculus 1 as an on-line class. The Gross Method, as she knew, was uniquely her work product and a style of instruction that she had not seen utilized by other professors in her university. Having observed multiple Calculus classes taught by different instructors, Katherine knew that she had created something terrific, with the inputs of her fellow

instructors. The Gross Method involved teaching to the interests of the students. Knowing that Calculus 1 was a course taken by any number of majors fulfilling a mathematics requirement, Katherine decided that she could write problems and develop assignments tailored a bit closer to students' majors so as to maximize the interest level of her students. Once students saw the utility of this powerful mathematics, they wouldn't simply want to turn away from it as another required course. Katherine was pleased with her results because she knew that she would be customizing class content to meet the needs of her students. Her plan was to tweak her problem sets each semester once she found out each student's major. She knew that this would mean additional work before each semester, but she built additional sets of problems to use as needed.

## **IRREPLACEABLE**

The first semester had its share of glitches on the technical end and its share of adjustments to be made on the education and student management ends. Students and professors had to acclimate themselves to the rigors of online learning. Students expected substantial amounts of attention due to not having classes in person. The volume of emails that Katherine had to manage was forbidding. It made sense though. Students had no access to her except during office hours, so communication had to happen somehow. Office hours were now replete with students asking content questions, which Katherine was all too happy to answer and technical questions about the online structure, which she deflected to academic computing as needed. By the end of the first semester of online teaching, Katherine was able to make changes to the course in order to anticipate and alleviate some student questions. Having learned much about the technical side of things, Katherine became adept at handling some of those questions herself. She was also able to tweak study guides and add films of herself completing example problems through all of the steps. Through the spring semester 2017, she found that these additions decreased attendance and anxiety during office hours. At a meeting of the professors of the pilot program and the key administrators at the end of the spring semester, Katherine was able to give a positive recommendation for the expansion of the program, as did seven of her nine colleagues. The administration found that while there was some backlash from parents about the move to some online courses, there were also positive responses from parents who liked the idea of the university keeping up with recent effective trends. Summer 2017 proved to be very lucrative for St. Ignatius and Katherine. Because of online learning, the university added the same 10 courses to both semesters of its summer offerings. This brought in over \$600,000 in additional revenue as students could take the courses from their homes in other states and not have to concern themselves with transferring credits from another institution in order to get credit at St. Ignatius. Online learning may not be for everyone, but it certainly was proving valuable to all interested parties. Katherine offered Calculus I in both summer 2017 sessions in addition to teaching two courses at Eastbrooke University, another liberal arts school in Baltimore. Katherine was pleased with her online course and saw more places to refine it with the third and fourth offering. During her annual review, Sue Desmond remarked on all of her outstanding progress but particularly focused on her terrific online offering. Sue mentioned that Katherine should be aware that Dr. Rick Cunningham was retiring at the end of the coming year as promised and that Katherine should most definitely apply for the new tenure-track job that would open. Katherine's eyes widened. Could her dream come true at St. Ignatius? Noticing the surprise and joy in her eyes, Sue Desmond said, "look, you still have to apply for the job and

compete with the pool of candidates, but I'm in your corner. Who could be better for the job than you?" Maybe online learning could be beneficial to everyone involved, including making Katherine irreplaceable to St. Ignatius.

### **A NEW OPPORTUNITY**

Katherine supplemented her income earned at St. Ignatius University by working on a part-time per course basis at Eastbrooke University, with the permission of Sue Desmond. Eastbrooke University was another local liberal arts college similar in scope but smaller than St. Ignatius. Katherine had begun teaching courses there in the summer of 2015 and found the extra work enjoyable and the extra money helpful. When speaking with the math department chairperson, Dr. Tim Clark, she mentioned the online project that she was working on for St. Ignatius. Eastbrooke University had undertaken a similar project in 2010. Having modest success across a number of departments at the university, Tim had been hesitant to offer online courses in the math department. Katherine kept Tim apprised of her success creating and running online classes at St. Ignatius. He asked her for results she had gotten from the online classes. He wanted to know if students who took the online version were testing similarly, if they had similar outcomes in terms of grades and understanding, and perhaps most importantly, were they adequately prepared to take the next level of calculus? With Katherine's reassurance that outcomes were comparable, Dr. Clark made Katherine an offer to teach an online section at Eastbrooke University for fall 2017 instead of her traditional class. Katherine accepted the offer knowing that the time commitment may involve more office hours. Things went well that first semester. Katherine used the same structure and content for Calculus I at Eastbrooke University as she had at St. Ignatius. The entire creation of her course at Eastbrooke university took an afternoon and involved little more than transferring files of problem sets and videos of her solving problems. When Tim saw the polished content, he was impressed but he needed proof that it worked. At the end of the fall semester, he interviewed students who had taken Katherine's course and found them quite well informed and prepared. Tim was so impressed that he offered Katherine two more online classes for the spring 2018 semester. It would seem that Katherine was well on her way to being irreplaceable to Eastbrooke University as well.

### **DIFFICULTIES ARISE**

Katherine enjoyed the winter break from school, but when mid-January ushered in the new semester, Katherine was refreshed and excited to get back to work. She went into her office the Saturday before classes began to print out copies of her syllabus for students, when she saw an envelope in her mailbox. When she opened it, her jaw dropped. As she read the letter, she was flooded with emotions that ran from sadness to anger, fear to suspicion. The letter was a cease-and-desist order sent from the lawyers at St. Ignatius University. Apparently, Katherine had violated the university's intellectual property policy by copying much of her online Calculus course and using it at Eastbrooke University. The contract she signed to develop the course had made no specific reference to the intellectual property policy, but the contract did allude to it and according to the university, since it paid for the development of the course, it could decide how the product was used, given that Katherine was an employee of the university. St. Ignatius did not want a competitor to benefit from this course. After reading the letter from the attorney, Katherine felt violated. She had developed the content in exchange for pay. The university

owned intellectual property in Katherine's class based on Katherine's employment. (See Appendix 3 Intellectual Property) This was true and defined as part of the Faculty Handbook. However, particularly because she was using her own images in the videos that she recorded, wasn't the material hers to use as she saw fit as well? Didn't she own the images of herself in the lectures at least? Perhaps more importantly, her employment status with the university was full-time, included benefits, and was assumed to continue from year to year. Yet without a tenure agreement, or a more permanent status at the university, did the fact that she signed a renewable contract each year constitute Katherine as a contractor rather than an employee? If Katherine were an employee proper, the copyright would almost certainly belong to St. Ignatius but this would not necessarily be so if Katherine were a contractor.

She immediately called her department chairperson, Sue, to discuss the problem. Sue was blindsided by the news but said that it shouldn't be a problem. A meeting with the attorneys to clarify the problem would clear things up. Sue was sure it was a mistake. No one had ever had such a problem with intellectual property in all of Sue's years of experience – "of course the whole online learning situation is presenting everyone with new burdens to go with the benefits", Sue said drolly.

But the meeting with the university attorneys, which Sue attended with Katherine, was no laughing matter. They were serious. Katherine could not use her course at Eastbrooke University, or any other school, again. As intellectual property of the university, St. Ignatius asserted that they could use the class as they saw fit, including using the course with another teacher in Katherine's place. The attorneys even questioned Katherine's loyalty to St. Ignatius, given her use of the course at another university for her own gain. Fr. McCourt who also attended the meeting, stated the university's position in a kindly way and said that he "was sure that Katherine understood the problem and that it would not happen again". Sue defended Katherine by saying that she knew how loyal Katherine was to St. Ignatius and that sometimes even our "stars" make mistakes. After the meeting, Katherine confided in Sue that she had hoped Sue would back her in continuing to use her own materials as she saw fit. Sue was clear. "Katherine, I know you are in the right. You know you are in the right. These materials, especially the images you use of yourself teaching, are yours. But you have to remember that the house always wins, especially if you want a place in the house." Sue was correct. The upcoming hire would be a nonstarter if Katherine waged a legal complaint and yet, even if the house does always win, should it?

Katherine left the university that day feeling defeated. Should she contact an attorney? Possibly, but she couldn't afford one and she didn't want the university to simply not renew her contract for the coming year, if she were to defend herself, simply because they could. Was there a way to change the materials enough in order to get approval from the St. Ignatius to teach her method at Eastbrooke? She was unsure of many things, but there was one thing she was sure of. She headed home to review her entire online course to calculate how many images of her appeared and to decide if those images alone were adequate enough to stake a claim to her property such that ownership of the material would be legally awarded to her should she press the case.

**APPENDIX 1: KATHERINE GROSS EMPLOYMENT CONTRACT**

*St. Ignatius University*



Instructor: Katherine Gross

I am pleased to notify you of your reappointment and salary for the 2016-2017 academic year, based on the recommendation of your Department Chair. I want to thank you for your dedication to the mission and values of St. Ignatius University through your teaching and service. We greatly appreciate all you do for St. Ignatius and our students. As a reminder, St. Ignatius and its faculty members are governed by the Rank and Tenure Policy Statement and other administrative policies of the University, most of which are detailed in our Faculty Handbook.

The current year's contract stipulates a teaching schedule of 4 courses in the Fall 2016 semester and 4 courses in the Spring 2017 semester, to be determined by the needs of the department and according to the chairperson. The teaching of said coursework comprises 80% of your professional duties. The remaining 20% of your duties will consist of volunteer work on university committees and initiatives and/or service to the department in which you work.

Your total compensation (salary and fringe benefits) at the rank of Lecturer, of \$52, 500, will span from July 1, 2016 through June 30, 2017, with payments disbursed on the 15<sup>th</sup> and 30<sup>th</sup> of each month. In addition to your salary, the University provides certain health, dental, paid leave, and tuition remission benefits to eligible employees. For information on these and other benefits offered by the University and whether you may be eligible, please contact Human Resources.

Please print, sign and return your contract to Dawn Johansen via e-mail to [djohansen@ignatius.edu](mailto:djohansen@ignatius.edu) or by mail to St. Ignatius University, Office of the Dean of the College of Arts and Sciences, Locke Hall Room 444, **UPON RECEIPT OF CONTRACT.**

This is a one-year appointment that does not lead to tenure or commit the University to employ you beyond the 2021-2022 academic year.

Many thanks for your involvement in the programs at St. Ignatius. Your efforts improve the quality of the education students claim upon graduation. If you have any questions, please contact Dawn at (555) 608 - 9182 or by email [djohansen@ignatius.edu](mailto:djohansen@ignatius.edu).

\_\_\_\_\_  
Instructor's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dale Flurry, Ph.D., Dean, College of Arts and Sciences

\_\_\_\_\_  
Date

**APPENDIX 2: KATHERINE GROSS ONLINE COURSE CREATION CONTRACT**

*St. Ignatius University*



Instructor: Katherine Gross

Upon the recommendation of your Department Chair, I am pleased to offer you an appointment to develop a course that will be delivered completely online. As part of this pilot program, you will be tasked with helping to lead St. Ignatius University into the future through digital learning. The stipend offered is a one-time development stipend aimed at compensating you for the research and time involved in creating a course in your discipline for online delivery. The result should have a thoughtful balance of synchronous and asynchronous activities aimed at maximum engagement with students aimed efficiently at their learning needs. The ultimate goal of this pilot program is to develop courses that will, where possible or necessary, replace traditional classroom delivery.

The university recognizes the challenge of such an enterprise and hopes that through your efforts and those others in the pilot program that digital pedagogy will become a second alternative aimed at maximizing our potential for retaining students. The following information describes the course and your stipend. This position and its compensation are governed by the Faculty Handbook and University-wide faculty compensation agreements and employment policies, including the ownership of the course in question by the university. A working digital course should be prepared and ready for testing no later than 6/15/16.

Course Development Project: MA 201 Calculus 1  
Start: 3/2/2016  
End: 6/15/2016  
Stipend: \$5000

The stipend will be paid over the remainder of the Spring 2016 semester and through the due date 6/15/16. Please print, sign and return your contract to Dawn Johansen via e-mail to [djohansen@ignatius.edu](mailto:djohansen@ignatius.edu) or by mail to St. Ignatius University, Office of the Dean of the College of Arts and Sciences, Locke Hall Room 444, **UPON RECEIPT OF CONTRACT.**

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\_\_\_\_\_  
Instructor's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dale Flurry, Ph.D., Dean, College of Arts and Sciences

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Date

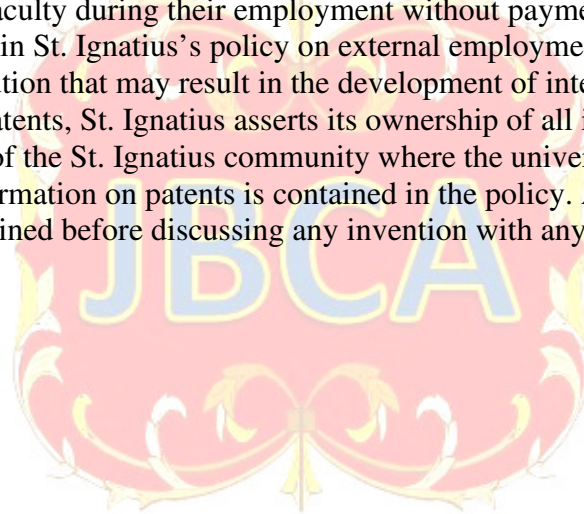


**APPENDIX 3: ST. IGNATIUS INTELLECTUAL PROPERTY STATEMENT****I. Intellectual Property, Copyrights, and Patents**

St. Ignatius University faculty, administrators, staff, and students are encouraged to develop intellectual property through any facet of their employment at the university. Toward this end, St. Ignatius University has adopted *Policies for Intellectual Property, Copyrights, and Patents* to guide decisions related to intellectual property. This policy, covers all forms of intellectual property created at or under the auspices of the university, including but not limited to those covered by patents and copyrights. The paragraphs below highlight a few key features of this policy. Faculty members engaged in work that might lead to copyrights or patents should consult the policy.

In keeping with the tradition of faculty ownership of writings and creations and other materials that are potentially subject to copyright protection, the university disavows ownership of faculty members' works, except in the case of sponsored projects or works developed specifically for the use of St. Ignatius University. The university retains the right to use said materials developed by faculty during their employment without payment. In addition, faculty members must work within St. Ignatius's policy on external employment prior to providing services to another institution that may result in the development of intellectual property.

With respect to patents, St. Ignatius asserts its ownership of all inventions created or developed by a member of the St. Ignatius community where the university has provided a contribution of note. Information on patents is contained in the policy. Agreements of non-disclosure should be obtained before discussing any invention with any individual, including students.



## Teaching Note

### Case Synopsis

Katherine Gross, a non-tenured faculty member at St. Ignatius University, agreed to develop and teach an online Calculus class as part of her university's pilot online learning program. She was one of ten faculty members who spent 3 months designing a class and conferring with her fellow faculty members as to best practices in transferring traditional classroom experience into cyberspace. The first year was a learning experience whereby Katherine developed a specific method for individualizing calculus to the students and their respective majors - the "Gross Method". One of the things that students found particularly useful was videos of herself solving problems. She then used this course at another university and discovers that according to the powers that be at St. Ignatius, she is violating their intellectual property policy. The cease and desist order came from the university president and the university attorneys and even Katherine's department chairperson knows that it is a serious problem not to be taken lightly. But isn't the course as an ongoing developing entity now Katherine's property and not the property of St. Ignatius University, particularly given the images of Katherine imbedded in the course?

### Learning Objectives

In completing this assignment, students should be able to:

- 1) Evaluate the concepts of property, intellectual property, and how the development of such property over time affects the ownership thereof.
- 2) Consider the specific role that using one's image in the production process changes the product into something that is inalienably one's own.
- 3) Consider the specific nature of the internet, how it changes the relationship of student and teacher, and how it affects the concept of property in the sense of rights and duties.
- 4) Develop an idea of striving for completeness regarding policies and procedures when confronted with a novel moral problem.
- 5) Evaluate the definition of employee as opposed to contractual worker.

### Research Methods

The Critical Incident is based on the experiences and observations by one of the authors of the case. The names of the individuals, the school, and its location have been disguised to preserve anonymity.

### Discussion Questions

- 1) What rights does the university have over the teaching style of its faculty? How does the concept of property inform the special variety of intellectual property involved in the use of

the internet and online courses? What problem is highlighted in the university's policy given the use of Katherine's image?

- 2) Since Calculus is a fact-based, objectively certain discipline with little room to alter the course material how can a faculty member distinguish what is hers/his and use it in another job without the original employer denying usability? Will her verdict be applicable to all faculty in the Arts & Sciences and beyond?
- 3) What percent of work material must an employee alter to consider it his/her own? If the university administrators demand that Katherine alter a certain percent of the course, how can she do so without losing essential material?
- 4) What is the administration at St. Ignatius University's core issue?
- 5) When faculty on sabbatical publish, the host university holds no claim to the proceeds. Is this case different? If so, how is it?
- 6) What are the long-term ramifications of losing that St. Ignatius University's administrators most fear?
- 7) If Katherine quits or is fired, should she be allowed to take the class with her without the university staking any claims to it?
- 8) Could Katherine skirt the issue altogether by changing the course substantially or putting her course on Coursera or another open source, free course site?

### Answers to Discussion Questions

1. The challenge for a university (or business) in developing an equitable intellectual property policy is in making rules that are uniform for all employees, encourage employees' development, and propel the institution forward. Currently, developing an intellectual property policy involves the specific challenges of digital technology and the use of the world-wide web. Universities have been using distance learning for more than a century, beginning with correspondence courses in the late nineteenth century. (Saettler) While these correspondence courses of old are quite a bit removed from the current Small Private Online Courses (SPOCs) offered by most colleges and universities in various concentrations and Massive Open Online Courses (MOOCs) produced by top professors in their fields, they provide a genealogy for the market and need for distance learning. With the advent of the internet, distance learning changes substantially insofar as students can have more access to their professors through electronic mail, instant messaging, and recorded lectures. Digital distance learning shortens the distance between instructor and student. But herein lies the problem. If we take certain classical philosophical definitions of property, then property involves the process of removing something from the natural state in which one would find it, working on in some way such that one invests one's time, effort, and talent in reshaping it through craft, and then claiming it as one's own. John Locke made this case in chapter 5 of his *Second Treatise on Civil Government* (Locke, page 10-18). George Wilhelm Friedrich Hegel makes a similar case in the first part of his *Philosophy of Right* (Hegel, pages 59-

83). His addition to the argument is that making property one's own involves an action of the will and designation. This Hegelian concept of property becomes important in the case presented because of the way intellectual property is designated through the use of one's image.

The move in higher education in the last decade is to offer at least some courses online. In the case in question, St. Ignatius has been fighting a losing battle against technology and, as a result, has been losing revenue. Developing an online presence in distance learning requires a special touch on the part of the professors involved so as to recreate the classroom atmosphere as much as possible in cyberspace. This requires frequent smaller assignments so that the student is actively engaged often and a reasonable amount of contact with the professor for questions to be asked through chat sessions and electronic mail. Another way that online courses work better is through recorded lectures or problem sessions. This involves instructors recording themselves in front of a camera and providing students with these digital files.

The first problem for the university and its professors is an issue of whose property such images are. It is clear that St. Ignatius University is applying its standard intellectual property policy to Katherine's course. They paid for her expertise and skills in developing the course. *Prima facie*, the course would seem to belong to the university. Yet, even if Katherine's knowledge of the intellectual property policy is lacking, her reaction is reasonable. She created the course. It contains multiple lengthy films of her explaining topics and completing problems. Perhaps more importantly, the course evolves over several semesters into something steadily improving. It is a process. The university paid for initial development. It did not pay for improvement. Yet, part of the work of teaching is improvement of content as needed and the university was certainly paying Katherine to teach courses. Regarding the university's existing policy, there is nothing regarding the use of Katherine's image, how it can or cannot be used, and whether her image, as a Hegelian designation of the course as hers, makes that the course is hers regardless of what their outdated policy states. The course develops. It develops with the addition of Katherine's image. It becomes something other than the university paid for as a result of her image. If the university seeks to use this course as it sees fit, including having other faculty members teach the course using Katherine's image in the videos, shouldn't Katherine be paid royalties for her image? In some sense, with her images included, her property is inalienable except through her decision, or to use the classical literature as our guide, it is alienable in "that it is mine only in so far as I put my will into it. Hence I may abandon (*derelinquere*) as a *res nullius* anything that I have or yield it to the will of another and so into his possession, provided always that the thing in question is a thing external by nature." (Hegel, pages 81-82) The university needs to update its intellectual property policy to match its foray into a new style of educating students. This policy must adjudicate fairly, the use of digital images of the instructor and set up a royalty structure for use of the courses other than by the author.

2. The myriad of courses that can be offered online by a university presents a problem for the equity that can be achieved through an intellectual property policy. Some subjects such as the calculus course offered by Katherine Gross in our case, are objectively certain disciplines. There are certain elementary topics that must be learned in order to capture the reality of the discipline in question - that without which the discipline has not been effectively covered. Perhaps the best way to understand this notion is that in calculus, if you haven't introduced the topic of derivatives or if you haven't explained the methods for calculating them, then you haven't learned calculus. The same might be said of an introductory course in corporate finance. If you never learn about the time value of money, then you really haven't studied corporate finance. On

the other hand, some disciplines are not so replete with elements that are necessary to study. For instance, if one is to study introductory philosophy, one could choose to teach the subject by topics. Professor A might choose to have a student read several different theories by several different authors about the existence or non-existence of God. Then one could go on and teach an array of arguments about human nature. Another approach which is very popular and many will argue equally effective, is to approach philosophy historically as a continuous development of ideas. Under this approach one would read the tomes of the masters along a time-line - recognizing the criticisms of prior authors stated or implicit in the latter.

The problem here involves how a university could possibly develop an equitable intellectual property policy, when one is to determine ownership over time. In the case of Katherine Gross, St. Ignatius is at a crossroads financially. In an attempt to increase revenue by offering courses online, the university is woefully unprepared regarding its intellectual property policy. To get things right and be equitable, it will need to determine how much a professor needs to change his/her course in order to be able to transfer its use to another school. If St. Ignatius owns Katherine's online course outright, they should be able to give her guidelines as to how she could change it in order to use it elsewhere. A percentage of material must be determined. The problem that is less tractable is how difficult this is in certain disciplines like calculus and finance. Given that certain disciplines are objective in content, it may be very difficult if not impossible for Katherine to change her course in order to avoid litigation. Particularly given her novel approach to teaching calculus, how can she use it and change the course enough in order to use her method. The worst case scenario is that a professor could be left unable to transfer a course to another venue and therefore never be able to teach the subject (in our case calculus I) online again away from St. Ignatius. This would be particularly pernicious for a contingent faculty member like Katherine who is contractually appointed annually and not tenured.

3. Katherine has put in a substantial amount of work across several semesters into developing a Calculus course that she and her colleagues find an adequate replacement for a traditional course in a classroom. She has done this predominantly by adding pre-recorded lectures and problem solutions so that students have examples to follow. While it is true that St. Ignatius had paid her for the service of creating the course, one might question whether given the extent to which she has changed the course over several semesters, whether it is still owned by St. Ignatius outright. Given the changes she has made, especially with the addition of her image in video presentations, one might reasonably ask whether she now owns the course and can in fact use it elsewhere. An issue of contention between Katherine and the administrators at St. Ignatius will involve what percentage of the original content, for which Katherine was paid and signed a contract, must be altered or in any way non-representative of the initial work product remain. In order to begin to make inroads into answering this question, Katherine went about researching sources to determine her position. The number of hours she spent in developing the original course involved not only creating problem sets, quizzes, and exams but also entering solution sets for student use once homework assignments were submitted. All together her initial time investment for the first iteration of her calculus course was 55 hours, including the meetings with her colleagues during summer 2016 and the meetings with technology services to learn how to best utilize the university's online database. As the iterations of the course followed and Katherine added videos of lectures and problem solutions, the number of course multiplied quickly. She spent time writing scripts, rehearsing them, recording herself, and then watching the final product. After the fact, she often found herself re-recording segments for clarity and

completeness. Each lecture averaged 4 hours in terms of preparation in order to execute well. Each problem took approximately 30 minutes to write and explain thoroughly. As semesters passed, she would add problems to her bank that she found students struggled with. The consideration is that of any salaried employee. A salary at any job sounds enticing if you consider a basic work week of forty hours. However, when that work week grows to sixty or seventy hours, the honeymoon is over. In the same way, Katherine may have been pleased to receive initial compensation of \$5000 to develop the course and make herself indispensable but the bloom could easily fade when the hours grow exponentially. As a contingent faculty member, the bloom didn't fade for Katherine because she became more indispensable to her department. Yet when confronted with the legal issue, she couldn't help but feel wronged given all of the 'voluntary' hours she dedicated to making her class timely and excellent. A reasonable solution to this problem comes in the development of a new intellectual property policy that defines how faculty might be able to legally transfer a course for use at another institution. This would require determining a percentage of change necessary to make a course different enough.

4. The administrators and attorneys of St. Ignatius University have tunnel vision. Struggling with the same financial difficulties as other colleges and universities and having previously been strident holdouts to online education, the powers that be want to jump into making money with online courses with both feet, having not completely thought out the process or the policies that might be needed in order to act equitably. Colleges and universities are faced with the problems of a shrinking population and the increased competition for this smaller number of students. The added problem of administrative bloat due to increased parental expectations and the realization that students need support services in order to graduate, drives this spiraling problem of maximizing services while minimizing costs. (June) Online learning offers the benefit of reaching more students more easily without having to use classroom space. Integrating online learning into higher education, where parents expect more for their increased tuition costs, makes online learning a tenuous venture. (Ibid) This is balanced by the fact that the increased use of technology in a venture such as online learning, makes it attractive in certain ways even to parents who want the most for the money. The finest product in some sense sells itself. The core issue for St. Ignatius is maximizing this new stream of income and not having that stream dammed up by a competitor offering the same product, particularly one taught by one of its own professors. That is where Katherine's violation of the intellectual property policy comes into play. Particularly with her innovative method of bringing calculus to students, Katherine taking the course elsewhere appears as an affront to the good will of the university. What may be unclear to the administrators and legal counsel at St. Ignatius is that, as a contingent faculty member (neither tenured nor on tenure-track), she really needs to make more money at other colleges and universities by signing per course contracts. Not being able to transfer her excellent work in any fashion hobbles Katherine's ability to earn a living. Given that the issue is more complex than the current intellectual property policy can adequately adjudicate and given that a Catholic university like St. Ignatius has to keep to certain moral values that would indicate treating Katherine otherwise, the administration is falling short in several ways. They are falling short by not having an adequate policy in place for digital pedagogy. More importantly, they are falling short by not adequately measuring the costs of development of a quality product that can last. Next, the administrators are falling short by violating Katherine's rights to use the product of her labor and her image as a way for her to earn money, shore up her professional reputation and include the class as an incentive for other universities to hire her. They seek to follow the

letter of the lawful contract they have with Katherine without seeing the human moral nuances that inform the true situation. Lastly, they are falling short by putting profitability over the needs to deliberate legally and morally by developing a more robust intellectual property policy that is equitable.

As moral problems, the first two shortfalls of the university are utilitarian concerns. According to Mill and utilitarians in general, the principle aim of morality is to achieve the greatest happiness for the greatest number of people involved. (Mill) This requires that we first of all do not harm and then seek happiness in as great abundance and with the most people as possible. If we follow Mill's argument in chapter 2 of *Utilitarianism*, then the administrators need to develop what Mill referred to as a corollary to the principle of utility. (Mill) In the literature these corollaries are referred to as secondary rules. If the greatest happiness principle is the primary rule of morality, then other rules, regulations, and policies aim at happiness by governing categories of actions. Mill states

that mankind have still much to learn as to the effects of actions on the general happiness, I admit, or rather, earnestly maintain. The corollaries from the principle of utility, like the precepts of every practical art, admit of indefinite improvement, and, in a progressive state of the human mind, their improvement is perpetually going on. But to consider the rules of morality as improvable is one thing; to pass over the intermediate generalization entirely and endeavor to test each individual action directly by the first principle is another. It is a strange notion that the acknowledgment of a first principle is inconsistent with the admission of secondary ones. (Mill, page 24)

In the case in point, digital technology has produced a novel method of pedagogy that is not adequately governed by the current intellectual property policy (secondary rule) of the university. Therefore, their policy requires improvement through a revised intellectual property policy. The second shortfall is likewise a utilitarian problem. The university has not adequately judged the amount of time it might take to get an internet course to be excellent. The development that they paid for initially is actually ongoing and it involves the use of Katherine's image in pedagogical videos. The use of her image by the university in cases where she is not the instructor might require some sort of royalty structure that would adequately compensate the creator - in this case Katherine.

The third and fourth shortfalls here involve issues of duty and are more appropriately governed by Kant's deontological moral theory. Kant's second version of the categorical imperative most clearly defines the moral problem involved. This imperative states that a person "act in such a way as to treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means." (Kant, page 36) However, Katherine argues that she has been treated as a commodity. The administrators see this differently because Katherine becomes a commodity when she agrees to exchange her intellectual outputs for a predetermined amount of money. By making a contract with Katherine to create an internet calculus course in exchange for a certain amount of money, St. Ignatius has a right to use the property as they see fit. The question then becomes whether the development of the course changes that. After the initial course is developed, Katherine changes it substantially semester after semester. While she is paid a salary to teach four courses each semester, and that implies some degree of manipulation of course materials each time, one may question whether that implies that St. Ignatius still owns the internet course outright and whether they can prevent Katherine from using the course elsewhere. Particularly given the fact that she has added so extensively to the course and that she has added so much of her own image to it, the university may be accused of using Katherine as a means to an end here - namely profitability. The important distinction is whether or not Katherine is used purely as a means to an end if the

university restricts the use of the course according to their current intellectual property policy. It is at least plausible that they are. If the university fully intends to use the course Katherine has created with her images intact and have another person take the role of instructor other than Katherine, then Katherine will not be paid as the instructor yet the videos she made will be doing a substantial part of the job of instruction. Katherine, her image, and her knowledge of calculus through the “Gross Method” will be used as a means to increase the university’s profitability. The materials will be used by another instructor who will be paid. Katherine’s right to the use of her images, not to mention her method, will be violated. This may also be the case if she is impeded from using these materials - particularly her image - elsewhere. Katherine is violated in two ways then. The third university shortfall impedes Katherine in the use of her own property. The fourth of the university’s shortfalls makes Katherine solely an instrument of the university’s profitability anytime her image and method are used and she is not the instructor. (Kant, page 36)

The problem, in Kantian terminology, may come down to the fact that in creating the course for the university and then using it elsewhere, Katherine has competing duties. Christine Koorsgaard has described this in her concept of “practical identity”. She explains that

[p]ractical identity is a complex matter and for the average person there will be a jumble of such conceptions. You are a human being, a woman or a man, an adherent of a certain religion, a member of an ethnic group, a member of a certain profession, someone’s lover or friend, and so on. And all of these identities give rise to reasons and obligations. (Koorsgaard 1996b, page 101)

Thus, in using the categorical imperative effectively, one must consider the hats one wears carefully so as to align one’s duties righteously. This may not always be possible and Koorsgaard’s use of the word “jumble” in describing our practical identities is astute. Katherine is an employee and has certain duties to the university. She is a teacher and has certain duties to her students. While the duties that these practical identities require align substantially, they are not exactly the same. For instance, she could owe a certain practice to her students so as to be an effective teacher that the university disallows. An example of this might involve a university requiring timed final exams during a predetermined exam period but a teacher asking for special dispensation under the auspices that such an examination teaches her students nothing. As an employee, Katherine owes the university a well-designed functional course after being paid \$5000. Again, as an employee, but under the auspices of her salary, she owes all of the students she teaches across the span of a year, her expertise, her teaching, time with remedial help in office hours, and the constant improvement of her materials. She owes the same expertise and improvement to her students under her practical identity as a teacher. Katherine owes the university (as an employee) and the students (as a teacher) excellence and improvement in teaching and teaching materials. In the case of teaching the internet course, while time consuming, this means a lot of time writing scripts, solving problems, and filming herself solving those problems. Herein lies the rub. Over time this may change based on the types of students she has by the very method she has developed - the “Gross Method”. She is not only filming herself and disseminating her image and likeness. She is doing this repeatedly and to the benefit of the university. Paid for this under service to the university and to her students, she is using her image and likeness for the good of the university as an employee and for her students as a teacher. The problem is in a third practical identity - Katherine as property owner.



Upon right of first refusal, the university has made stipulations that it will use Katherine's course with another teacher in her place. Also, given that the contract Katherine has with the university is yearly, this would imply that if not renewed in any coming year, that St. Ignatius would retain the course as its property, use it as it sees fit, and that Katherine could not use it without their consent. And yet, as a property owner, this forces her to teach untold legions of students without any further compensation through the use of her images in the course. Koorsgaard's concept of practical identities highlights for us the moral problem of conflicting duties. Katherine also has a duty to herself, as a property owner, to retain rights at least to the use of her own image and to be paid for the use of that image just as a musician receives royalties for his/her song played on the radio. As a result, the university's intellectual property policy needs to be updated to involve digital technology and the challenges that virtual reality plays in ethics and in the marketplace.

5. When a faculty member leaves for sabbatical, which is a fully or partially-paid leave of absence, he or she does so under the proviso that he or she is working on an academic piece, whether it be written, visual, artistic, computational, or research that will be published. A published piece is a reflection upon the faculties' scholarship and therefore a reflection upon the university's academic standing among the over 2,800 universities and colleges nationally. It is a boon to a university when its teaching faculty publish because this measurement distinguishes one university from another. One of the benefits of reputational greatness is that the university can charge a higher tuition than other institutions. Thusly, it is beneficial to have faculty leave on sabbatical and produce a piece that the university can claim royalties to. However, a faculty member must balance what he or she is willing to produce and sacrifice as royalties versus what he or she is not. When it comes to producing work while employed by the university, one should still "pursue such things, as were consistent with his duty and interest, and invested him with an inviolable right to personal liberty...(for between faculty and the administration there must be) a voluntary compact between the rulers and ruled; and must be liable to such limitations as are necessary for the security of the *absolute rights* of the latter." (Hamilton - The Founder's Archives) The musings of Alexander Hamilton ring true with Katherine's predicament. She wants to continue to refine and update her online class but fears that each time she does so, she restarts the clock on the university's right to 'own' her material. Her dilemma is knowing at what point she has altered the class enough from its original form to qualify as a new class, one that is owned entirely by Katherine. Koorsgaard's concept of "practical identities" comes into play here again. Katherine and her duties to herself as a property owner are infringing upon her duties to the university as an employee and her duties to her students as a teacher. (Koorsgaard 1996a and 1996b).

6. After revisiting the bylaws and Intellectual Property statute of the university, the board of trustees and the lawyers reconvened to discuss the consequences of a negative outcome. In order to determine the value of the class, the members dissected the monetary inputs of class to sift through the cost of developing it, the technology expenditures, the salary to the instructor and her benefits, versus the number of paid enrollees. The university accountants estimated that by the time each student paid the cost (\$1350/per credit hour) for the three credit class, two students amply cover the cost to create the class (\$5000), the cost of the technology (\$1200, including the hardware, billable hours for the technician, the cost for the troubleshooter, the use to the classroom, and any incidentals). The revenue to the university on a per class basis is based upon

enrollment, whether the class is a Core or Gen Ed requirement, and how popular Dr Gross's class is. After just two students enrolled in the first year, the class was paid for and the only ongoing expense is the salary for Katherine, should she need to hold office hours, grade quizzes/exams, monitor the class performance, and complete an end-of-year analytic assessment of outcomes and student proficiencies. The university administrators see the revenue-generating benefits of running successful online classes now and into the future, so what it must do is shore up any vulnerabilities that threaten to impede its bottom line. These threats come in the form of faculty who claim ownership of created class content. "Thusly, the university's Intellectual Property document Introduction reads: *"Creation, development, and dissemination of Intellectual Property provides professional benefits to the individuals involved, contributes to the life of the University, and may provide monetary benefits to the Inventors and, subsequently, the University."* The university recognizes the use, necessity, and applicability of digital content courses, but needs to retain its rights to the revenues generated by their use, both now and in the future. The university's chief concern is that faculty will find it all too easy to get paid for course creation and then 'sell' the course to other institutions without benefit to the original university. Thusly, the increase in legal cases that press the issue. Because

over the last two years a number of universities have categorically asserted that they own these products of faculty research. And there is increasing evidence of institutional interest in declaring ownership of faculty intellectual property subject to copyright as well. The most notable example of the latter is those universities that demand full ownership of online courses and other instructional materials, a trend that did not begin escalating until the 2012-13 academic year. (Stanford v Roche case study).

8. Katherine is faced with an interesting option, one presented to her by a fellow colleague who is also concerned about his future payments for producing online classes. Like Katherine, he sees growth in this field and wants to make sure that he too owns the work he produced and continues to refine/add to. Katherine and her colleague decided to try to find ways to reap benefits for developing and executing a class after their initial \$5,000 course development payment. Since the course is technically 'owned' by the host university, Katherine and her colleagues had little say over when it is made available online. Katherine can exercise her right of first refusal, but this does not stop the university from making the class available and having a substitute faculty member field students' questions and grade exams. Should this happen, Katherine would be bequeathing her content to another instructor to teach at his/her discretion. Katherine foresaw the negative consequences of allowing another to teach her material. Her value to the university would be diluted, as would be the case with any forthcoming online material she, or other faculty members, taught. One of the 'tricks' of teaching is to execute the material in such a way that your talents, skills, and academic prowess are part and parcel of the teaching. Teaching is an art and a craft that is not easily mastered. Dedication, experience, trial and error, and copious amounts of editing go into becoming an effective, and usually, well-regarded instructor. This recognition comes from administrators, fellow faculty, and students. With a little bit of luck and a whole lot of work, a professor may become sought after and find that her classes fill up quickly. Eventually, as the instructor's popularity and reputation grow, at which point she may follow the lead of other popular faculty who publish blogs and upload their courses to the internet.

If the course she created gets uploaded to an all-access MOOC, then there are anecdotal benefits that she can capitalize upon. These benefits include notoriety among peers nationwide who likewise claim, anecdotally, that they have had higher book sales, better job offers, internet followers, increased lecture offerings, and higher class attendance, after their classes were well-received on an education website. Katherine did not want to defy the university by “selling” her class to another competing university but offering it for free to a broad and unknown student body seemed appealing. In justifying her decision to put her class on a site that offers free classes, Katherine is serving the greater good (the Utilitarian Argument) and using a modern vehicle to teach a course usually limited to those who can afford a \$70,000 education for free. Katherine thinks that uploading her class offers an opportunity that as a teacher she can justify. Teaching is a mixture of skills, academic excellence, and ability to impart knowledge onto those who do not know what you do. There is a virtue, or something like virtue, that is contained within the act of teaching. To understand the grandeur of this virtuous act -teaching- Katherine begins to feel compelled to offer her class as a MOOC and celebrate her virtuous decision.

### **KEY TAKEAWAYS**

After working through this case carefully, students might generate a number of key takeaways akin to the following.

- The questions of innovation and technology make the legal and moral landscape of business an ever-evolving set of concerns that require addressing with distinct and exact policies within organizations, otherwise stakeholders are left in a lurch regarding their rights and responsibilities.
- Special attention must be paid to the issue of using a person’s image in the consideration of intellectual property. While innovations may in fact belong outright to the employer of the innovator, the images used of such innovators may be and likely should be treated differently, perhaps more like residuals for repeated use.
- What is defined legally is not necessarily what morality demands. In the case presented here, we have an employee whose intellectual property, as created and paid for by her employer, involves her image. Repeated use by the employer without further compensation under the circumstances of another employee using the materials would seem morally suspect due to the images in questions, such that further compensation might be in order. Given the use of the images in question, some policy would also be necessary such that with enough changes, the employee could use the materials and images under other employment opportunities.

### **EPILOGUE**

In the aftermath of the meeting with Fr. McCoart and the university attorneys, Katherine felt alone and without recourse. She thought extensively about her employment at St. Ignatius and her work at Eastbrooke. With the immanent retirement of Rick Cunningham, Katherine knew that legalities and discretion would likely lead to the best outcome in being hired for the open position. This would mean doing exactly as the attorneys and Fr. McCoart required, not using her prepared class at any other university including Eastbrooke. Yet, Katherine was paid once with a separate contract to develop an internet course. Over the following semesters she developed it further so that as an evolving piece of work, the Gross Method was a project in

process of refinement. The university had purchased the course, not the method. Given that she added videos of herself solving problems this changed the product still further. Was the course the property St. Ignatius's property outright or had she changed it enough to make it portable? These questions prompted Katherine to request a meeting with Fr. McCoart. He had seemed so genuinely kind even in the delivery of the news that perhaps a discussion about it would be fruitful.

In their meeting, Katherine explained herself thoroughly. She presented Fr. McCoart the online course as she first developed it in her contractual agreement and then showed the next three iterations. She highlighted the changes and in particular the increasing involvement of her image through the use of videos. She explained that if other employees at St. Ignatius were to teach the course, her image would still be in use, which didn't seem quite fair. She also explained that by the time she was using the course at Eastbrooke, it was advanced well past the original iteration and included her images in the videos.

Fr. McCoart suggested a solution. He knew he could not promise Katherine sole use of her course as it was paid for by the university and she was an employee. Even if Katherine worked at the university for many years to come, the online course could be used by anyone as an asynchronous course. In fact, it should be used given its high quality. Fr. McCoart said that what St. Ignatius needed was an updated rewritten intellectual property policy, one that took into account the possibilities of online learning and the use of personal images. St. Ignatius was catching up with technology and now it had to catch up with appropriate regulations. Over the coming semester, a committee was enlisted to write the updated policy and within the year 2018, it was passed by the faculty senate. It stipulated the conditions under which a person could use their own online course elsewhere – by changing the content by more than fifty percent. The new policy also stipulated sole use by the creator for a certain time and the conditions under which that person's images could and could not be used with a royalty structure when they are used under the tutelage of another teacher.

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[1] See Appendix 3 – St Ignatius Academy Intellectual Property Policy

