

UNIVERSITY OF PITTSBURGH POLICY 11-02-02

CATEGORY: RESEARCH ADMINISTRATION
SECTION: Technology Management
SUBJECT: Copyrights
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I. SCOPE

In the course of teaching, research and other scholarly and administrative activities at the University, faculty, staff, postdoctoral associates, students and others may create works that are protected by copyright. Federal Copyright Law provides protection for original works of authorship automatically at the time those works are fixed in a tangible medium.

This policy establishes the rights and responsibilities of the University and of faculty, staff, postdoctoral associates, students and others regarding the creation, use and ownership of works protected by copyright, and the distribution of royalties generated from the licensing and exploitation of those copyrights.

II. POLICY

General Policy Statement

Copyright law (e.g. 17 U.S.C. § 101, et. seq.) provides that the copyright to a work created by a person in the course of his or her employment (a “work for hire” – see Definitions) belongs to the employer rather than the individual creator. However, universities have traditionally developed exceptions to this general rule that apply to their unique academic settings. Therefore, subject to the exceptions set forth in Sections A and B below, it is the policy of the University that the copyright in all materials created by University faculty, postdoctoral associates, or students (hereinafter “University Authors”) in the course of their academic responsibilities resides in the University Authors.

Except as specifically set forth in Sections A and B below, University Authors maintain all copyright ownership in any material which is a copyrighted work, including scholarly, creative, musical, literary or architectural work, in the author’s field of expertise (a “Scholarly Work”), such as scientific or scholarly research papers, popular nonfiction, novels, textbooks, computer programs, poems, musical compositions, films, webpages, lecture notes, dramatic works or other works of artistic imagination. University Authors, however, are reminded that they must also comply with Policy 11-01-03, Conflict of Interest Policy for Faculty, Scholars, Researchers, Research Staff/Coordinators, and with Policy 11-02-01, Patent Rights and Technology Transfer. Ownership of copyright cannot impede compliance with these policies or with University policies or Federal or State regulations governing academic issues such as research integrity.

A. University Retained Licenses in Scholarly Work.

1. Course Materials. The University retains a non-exclusive, irrevocable, perpetual, royalty-free license in Course Materials created by the faculty in the course of employment. This license includes the right to create derivative works, but not the right to publish such Course Materials for dissemination outside the University, unless the provisions of Section II, A (2), below apply to any such Course Material.
2. Scholarly Journal Articles. The University retains a non-exclusive, irrevocable, perpetual, royalty-free license to publish faculty and student Scholarly Journal Articles for dissemination

outside the University pursuant to the University's Open Access Guidelines as defined in the "Report of the University of Pittsburgh Open Access Task Force" (revised August 25, 2011) and Policy; except when the publication agreement with the publisher for the Scholarly Journal Article prohibits such dissemination.

B. The University retains world-wide copyright ownership for Scholarly Work in the following specific circumstances:

1. Assigned Tasks The University owns the copyright to works created: (i) by staff members (other than faculty or postdoctoral scholars) or student employees within the scope of their employment; and (ii) by faculty members or postdoctoral associates as an assigned task. An assigned task is any task within the scope of employment that is not a Scholarly Work. An assigned task might include the development of course materials that are posted on the internet or made available in some other format, when this has been specifically contracted for as an Institutional Work (see #4 below).
2. Outside Agreements Where copyrighted materials are developed in the course of sponsored research funded by an outside agency or entity pursuant to a written agreement, copyright ownership of such materials shall rest with the University unless it is stated otherwise by the terms of such agreement. See section II, D below.
3. Patentable Works Where a copyrighted work, such as certain computer software, is also patentable, University Policy 11-02-01, Patent Rights and Technology Transfer, will apply as to ownership of both copyright and patent rights and to distribution of any income from commercialization or exploitation, notwithstanding any inconsistent provisions contained in this or any other University policy.
4. Institutional Works The University shall retain ownership of works created as Institutional Works. Institutional Works include works that are supported by a specific allocation of University funds or that are created at the direction of the University for a specific University purpose. Institutional Works also include works whose authorship cannot be attributed to one or a discrete number of authors but rather result from simultaneous or sequential contributions over time by multiple faculty and/or students. For example, software tools developed and improved over time by multiple faculty and students where authorship is not appropriately attributed to a single or defined group of authors would constitute an Institutional Work. See for example, the USEP agreements to develop curricula. However, the mere fact that multiple individuals have contributed to the creation of a work shall not cause the work to constitute an Institutional Work.
5. Recording, Transmission, and Related Classroom Technology Any applicable copyright in an audiovisual presentation of courses taught and recorded or transmitted belongs to the University. Faculty members retain a non-transferable, personal, nonexclusive license to use the recordings or broadcasts for not-for-profit educational purposes, and the courses may not be further distributed outside the University without written permission from the Provost or his/her designee. Prior to videotaping or otherwise producing an audio-visual record, written permission should be obtained from anyone who will appear in the program. Assistance in recording and transmitting courses may be obtained through the University's Center for Instructional Development and Distance Education.

C. Student Works

As described above in accordance with academic and University tradition, the University does not claim ownership to Scholarly Works. Such works include those of students created in the course of their education, such as dissertations, papers and articles. However, patentable inventions including

those described in a dissertation, paper or article are the property of the University pursuant to Policy 11-02-01, Patent Rights and Technology Transfer. See also section **II, B (3)** above.

D. Works of Non-Employees

Under the Copyright Act, works of consultants, independent contractors, and other non-employees, created at the request of, on behalf of, or for the benefit of the University, generally are owned by the creator and not by the University, unless there is a written agreement to the contrary. Since it is the University's policy that the University shall obtain ownership of the copyright in such works, the University requires all consultants, contractors or other non-employees to execute a written agreement prior to the beginning of any work under such engagement that states that world-wide copyright ownership of such works is assigned to and vests in the University.

Examples of works which the University may retain non-employees to prepare are:

- Architectural structures
- Reports by consultants or subcontractors
- Computer software
- Architectural or engineering drawings
- Illustrations or designs, including computer graphics
- Artistic drawings and artistic works

E. Contractual Obligations of the University

This Copyright Policy shall not be interpreted to limit the University's ability to meet its obligations for deliverables under any contract, grant, or other arrangement with third parties, including sponsored research agreements, license agreements and the like. Copyrightable works that are subject to a sponsored research agreement or other contractual obligations of the University shall be owned by the University, so that the University may satisfy its contractual obligations.

III. ROYALTY/INCOME POLICY

A. Allocation of Royalty/Income For Works Other Than Scholarly Works

Where the University has an ownership interest in a work and revenues result from licensing that work or otherwise exploiting it, the standard royalty sharing arrangement will be as follows:

1. Where the work is a "work for hire" created by a University employee or non-University consultant, contractor, or other non-employee there is generally no royalty-sharing arrangement unless there is a written agreement between the University and such person(s) providing for distribution of income to the University employee, consultant, contractor, or other non-employee.
2. Where there is a written agreement between the University and any non-University individual or entity, or a written shared-royalty agreement regarding works created using University resources, distribution of income will be made according to that agreement.
3. In all other cases where the University has an ownership interest in a copyrighted work, first income will reimburse University or other development funds (excluding gifts and sponsored agreements) and other expenses or fees related to the creation of the work and the maintenance, or enforcement of the copyright or of licensing of the work.

The balance of proceeds from royalties or disposition will be distributed as follows:

- 50% to the creator(s) or developer(s);
- 25% to the department or school of the creator/developer for use in furthering the work of the creator/developer at his or her discretion with the approval of the department head or chair; or for purposes at the discretion of the department head or chair, if the creator/developer is no longer an active member of the faculty or staff and the department has applied for use of the funds as stated below, or is a student at the University; and
- 25% to the University Copyright Development Fund, to provide for development of works that may be copyrightable, under the direction of the Office of the Provost.
- In the event that total income from a copyright exceeds \$100,000, the above distribution of royalties may be changed in accordance with a plan approved by the Chancellor of the University, but not so as to reduce the creator's share.

In the event that an employee entitled to allocation of royalties or income under this policy leaves the University, voluntarily or involuntarily, the employee will continue to receive payments, but will not be entitled directly or indirectly to continue to receive or transfer any other rights or benefits from the proceeds distributed to the department, school, or University.

In the event of the death of an employee entitled to allocation of royalties or income under this policy, payments will continue to be paid to the employee's estate and subsequently to those who, by a court approved distribution or order, are designated to receive such payments. The limitations on distributions set forth in the preceding paragraph apply.

In the event of the above mentioned departure or death of an employee entitled to royalties or income under this policy, the department's share of funds described above will revert to the University Copyright Development Fund. The University Author's department, wherein the University Author was primarily employed while he or she created the work, may subsequently choose to apply to the University Copyright Committee for use of these funds. In the event of such an application, the Committee will make a recommendation to the Provost who will make a final determination.

Any disputes involving royalties will be resolved by the Provost, after a recommendation from the University Copyright Committee.

B. Determination of Ownership and Policy in Unclear Cases

Questions of ownership or other matters pertaining to materials covered by this policy shall be resolved by the Provost after a recommendation from the University Copyright Committee.

C. Use of the University Name in Copyright Notices

The following notice should be placed on all copies of all University-owned materials in order to protect the copyright:

Copyright (or ©), year, University of Pittsburgh. All Rights Reserved.

No other institutional or departmental name is to be used in the copyright notice although the name and address of the department to which readers can direct inquiries may be listed below

and separate from the copyright notice. The date in the notice should be the year in which the work is first published, i.e., distributed to the public or any sizable audience.

Additionally, works may be registered with the United States Copyright Office using its official forms. Assistance with the registration of University-owned works may be obtained from the Office of General Counsel, to which questions concerning copyright notices and registration also may be addressed. In cases where the University does not own the work, University Authors should consult their own counsel regarding registration.

D. Copying of Works Owned by Others

Members of the University community are cautioned to observe the rights of other copyright owners. Relevant legislation and guidelines regarding the copyright law, the TEACH Act and the Digital Millennium Copyright Act are available at the Office of General Counsel. Also see Policy 10-04-01, Copying Copyrighted Material.

E. In the event the foregoing guidelines leave you with unanswered questions which may affect proposed conduct, please contact the Office of General Counsel at 412-624-5674.

M. DEFINITIONS

A. Copyrightable Works

As used in this policy, "Copyrightable Works" and all references to works protected by copyright law mean and refer to the definition of copyrightable works under federal copyright law. Under federal copyright law, copyright exists in "original works of authorship" which have been fixed in any tangible medium of expression from which they can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device. These works include, but are not limited to:

- Literary works such as books, journal articles, poems, manuals, memoranda, tests, computer programs, instructional material, databases, bibliographies;
- Musical works including any accompanying words;
- Dramatic works, including any accompanying music;
- Pantomimes and choreographic works (if fixed, as in notation or videotape);
- Pictorial, graphic and sculptural works, including photographs, diagrams, sketches and integrated circuit masks;
- Motion pictures and other audiovisual works such as videotapes; and
- Sound recordings.

B. Scope of Copyright Protection

Federal copyright law provides that copyright protection does not extend to any idea, process, concept, discovery or the like, but only to the work in which it is embodied, illustrated or expressed. For example, a written description of a manufacturing process is copyrightable, but the copyright only prevents unauthorized copying of the description; the process described could be freely copied unless it enjoys some other protection, such as patent.

Subject to various exceptions and limitations provided for in the copyright law, the copyright owner has the exclusive right to reproduce the work, prepare derivative works, distribute copies by sale or otherwise, and as to certain types of works display or perform the work publicly. Ownership of copyright is distinct from the ownership of any material object in which the work may be embodied. For example, if one purchases a videotape, one does not necessarily obtain

the right to make a public showing for profit. Furthermore, simply because a work is available electronically does not mean it may be legally reproduced.

C. Scholarly Works

“Scholarly Works” are intellectual or creative works created in the course of academic responsibilities by faculty, postdoctoral associates or students, such as Course Materials, Scholarly Journal Articles, popular nonfiction, novels, textbooks, poems, musical compositions, films, webpages, dramatic works or other works of artistic imagination.

“Course Materials” are those intellectual or creative works created by faculty in the course of their academic teaching responsibilities, including but not limited to courseware, lecture notes, and webpages used to teach a University class.

“Scholarly Journal Articles” are those intellectual or creative works created in the course of academic responsibilities by faculty, postdoctoral associates, or students which are published by an academic journal, to include University journals and third party journals.

D. University Copyright Committee

The University Copyright Committee shall be formed and maintained by the Office of the Provost as follows. The Committee will consist of five members. A majority of the members will be faculty members. The Chair of the Committee will be the Vice Provost for Research. The Chair is also a member of the committee. The Committee may promulgate rules for its own conduct. The purpose of the Committee is to attempt to resolve copyright disputes, and if unable to resolve the dispute, make a recommendation to the Provost for final resolution. Any member of the University community may submit, in writing, a copyright matter for resolution to the Committee.

E. Work for Hire

According to Copyright law (e.g., 17 U.S.C. § 101, et. seq.) “work for hire” is a legal term defined as “a work prepared by an employee within the scope of his or her employment.” This definition includes works prepared by employees in satisfaction of sponsored agreements between the University and outside agencies. Certain commissioned works are also works for hire if the parties so agree in writing.

The employer (i.e., the University) is by law the author of a work for hire, and thus the owner, for copyright purposes. Works for hire subject to this principle include works that are developed, in whole or in part, by University employees. Where a work is jointly developed by University faculty or staff or student employees and a non-University third party, the copyright in the resulting work typically will be jointly owned by the University and the third party. In such instances, both the University and the other party would have nonexclusive rights to exploit the work, subject to the responsibility to account to each other.

Whether the University claims ownership of a work will be determined in accordance with the provisions of this Policy, and not solely based upon whether the work constitutes a work for hire under the Copyright Law. For example, copyrights to Scholarly Works of which the University disclaims ownership under this Policy shall be held by the creators regardless of whether the work constitutes a work for hire under Copyright Law. University ownership in other works for hire may be relinquished only by the Provost or his/her designee.

V. REFERENCES

Policy 10-04-01, Copying Copyrighted Material

Policy 11-01-03, Conflict of Interest Policy for Faculty, Scholars, Researchers, Research Staff/Coordinators

Policy 11-02-01, Patent Rights and Technology Transfer

Procedure 10-04-01, Copying Copyrighted Material

University Open Access Guidelines and Policy Statement,
dated XX.