

Policy 6-7 Rev. 1  
Date: May 14, 2001

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Subject: **OWNERSHIP OF COPYRIGHTABLE WORKS AND RELATED WORKS**

I. PURPOSE AND SCOPE

A. Purpose.

The purpose of this policy on ownership of copyrightable Works is to outline the respective rights that all members of the University community – faculty, students and staff – have in such Works created during the course of affiliation with the University. This policy preserves the practice of allowing faculty to own the copyrights to traditional scholarly works, and at the same time seeks to protect the interests of the university in works that are created with the substantial use of university resources (see section III.). Although this policy provides guidelines for determining copyright ownership, faculty are strongly encouraged to clarify issues of ownership and revenue sharing by specific written agreements with the Technology Transfer Office at the outset of the project or otherwise as soon as practicable.

B. Reference.

University Policy and Procedure 6-4, Patents and Inventions

C. Nature of Rights Protected by Copyright and Related Laws.

Copyright is the legal right of the owner of an intellectual or creative work to control the copying, modification, distribution and display of that work. Copyright protects the expression of ideas fixed in a tangible medium, but not the ideas that the expression embodies. For a basic understanding of the law of copyright, you may wish to consult the following resources:

Melville B. Nimmer & David Nimmer, Nimmer on Copyright

U.S. Copyright Office Home Page, <http://www.loc.gov/copyright>

U.S. Copyright Act, Title 17, United States Code

D. Definitions.

1. Work: Material that can be protected under copyright law or the Semiconductor Chip Protection Act, or any statute enacted in the future that governs the protection of intellectual property and is based on principles similar to the principles governing copyright.
2. Creator: One or more individuals, singularly or as a group, who make a copyrightable contribution to a Work.<sup>1</sup>
3. Owner: The party who owns or controls the rights to a Work and who has the right to sell, assign, distribute or license the use of the Work.
4. Commercial use: Making any agreement to collect or receive royalties, payments or other valuable consideration for the sale, license or other use of the Work.

E. Types of Works Covered by this Policy.

The following is a list of the types of Works that are covered by this policy. This list is intended to be illustrative rather than definitive.

1. literary Works
2. musical Works including accompanying words
3. dramatic Works including accompanying music
4. pantomimes and choreographic Works
5. pictorial, graphic, and sculptural Works
6. motion pictures and audiovisual Works
7. sound recordings
8. multi-media Works
9. computer programs and documentation
10. electronic course materials and software used in on-line courses and in the classroom
11. architectural Works
12. other Works of authorship, as defined in the U.S. Copyright Act, fixed in a tangible medium of expression
13. semiconductor mask Works
14. databases

Because of advancing technology, there are and will be new forms of Works that are not specifically enumerated above. Nevertheless, it is intended that such Works will be governed by this policy.

Any Work that is not clearly governed by this policy or by University Policy and Procedure 6-4 (Patents and Inventions) will be dealt with on a case-by-case basis by the University Technology Transfer Office in consultation with the appropriate University administrators.

Some types of Works are copyrightable as well as patentable. Ownership of any Work that is subject to copyright protection, and for which any type of patent application has been filed, will be governed by University Policy and Procedure 6-4, Patents and Inventions, notwithstanding any provisions of this policy to the contrary. In the event the patent application is withdrawn or is rejected, and a final decision is made that a patent will not issue, ownership of copyright shall be determined in accordance with this policy. If a Creator believes, or has reason to believe, that he or she has created a Work that may be subject to patent as well as copyright protection, the creator shall notify the Technology Transfer Office of the creation of the Work.

II. GENERAL RULES OF OWNERSHIP.

A. University Staff and Student-Employees.

Works created by University staff and student-employees within the scope of their University employment are considered to be works made for hire, and thus are Works as to which the University is the Owner and controls all legal rights in the Work. In contrast, Works created by University staff and student-employees outside the scope of their University employment are not covered by this policy and are considered to be owned by the Creators, unless such Works are created through “substantial use of

University resources” (as described in Section III of this policy).

B. Faculty.

1. The principal mission of the University is the creation and dissemination of knowledge. Therefore, the University transfers to the Creators any copyrights that it may own in a traditional scholarly Work created by University faculty members that result from teaching, research, scholarly or artistic endeavors, regardless of the medium in which the Work is expressed, unless the Work was developed with substantial use of university resources and commercial use is made of the Work. Only in cases where there has been substantial use of University resources can the University decide to initiate the commercial use. In such instances the University must obtain the prior, written consent of the faculty Creator, normally at the beginning of the project when the resources were provided. If the Creator intends to make commercial use of the Work, then disclosure must be made as required under section IV.A.
2. Notwithstanding section II.B.1, copyrightable material produced under grants or contracts from an external funding source shall be subject to conditions of the contract or grant with respect to ownership, distribution and use, and other residual rights, and shall be used and disseminated in compliance with all applicable laws.
3. If a faculty member is an author of a joint Work with a University student or University staff member, the collective rights of the Creators shall be determined by the rights of the faculty member.
4. If a faculty member is also employed by the University as a staff member or student, then the ownership rights as defined in this section apply only if the Work results from teaching, research, scholarly or artistic endeavor done within the scope of his or her duties as a faculty member.

C. Students.

Notwithstanding Section III, and except to the extent contrary to University agreements with third parties or other law, unless provision is made to the contrary in advance of the commencement of the Work, students are the Owners of the copyright of Works for which academic credit is received, including theses, dissertations, scholarly publications, texts, pedagogical materials or other materials.

D. Independent Contractors

Any Work created by an independent contractor for the University shall be the subject of a written agreement whereby the contractor may be required to assign all rights in the Work to the University and to acknowledge that such Work constitutes work made for hire, if appropriate.

E. Assignment or Release

1. The University may, at its sole discretion, determine whether to assign or release to a Creator of a Work any ownership rights of the University in such Work upon such conditions as the University deems beneficial and fair to all parties. Any such release of rights must be in writing and approved by the appropriate dean or equivalent supervisor of the Creator, in consultation with the Technology Transfer Office, and by the cognizant vice president or similar administrator.
2. Creators who are Owners of a Work may choose to assign copyright of the Work to the University, if the Owner and an authorized official of the University agree.

F. University Policy Documents

University policy documents, policies and procedures, memoranda and all other similar documents created solely or in part by faculty, staff or students, for the purpose of affecting in any way the operation of the University, shall be owned by the University, and no ownership rights on the part of the Creators shall subsist in any such Works.

### III. SUBSTANTIAL USE OF UNIVERSITY RESOURCES

The following provisions provide guidance in determining whether or not the creation of a Work involved the “substantial use of University resources.”

#### A. Categories of Substantial Use.

“Substantial use of University resources” in the creation of a Work, resulting in the University being the Owner of the Work, includes, but is not limited to the following situations:

1. The University and the Creator-employee (whether faculty, staff or student) agree to create the Work, in whole or in part, as part of a specific grant, contract, appointment or assignment, with or without a reduction in other University responsibilities. The agreement to create the work should include a clear stipulation of the copyright ownership.
2. The Work is produced through the use of University facilities not available to the general public and beyond the level of facilities and services (e.g., office space, libraries, limited secretarial and support staff, ordinary use of computers or other University facilities or equipment) that are customarily used by similarly situated colleagues of the Creator. Such facilities and services the use of which constitutes substantial use include, but are not limited to, laboratories, studios, equipment, production facilities, specialized computing resources, or special expertise of University-employed individuals.
3. The University provides significant University funding in direct support of the Work’s creation. However, regular sabbatical and administrative leaves shall not count as a factor in determining substantial use.
4. The Work is significantly based upon material that is proprietary to the University, regardless of whether the Creator produced such proprietary information.
5. The Work is produced under the specific terms of a sponsored research grant or contract administered by the Office of Sponsored Projects.

#### B. Determination of Substantial Use.

Because the determination of “substantial use of University resources” depends, in part, on facilities that are customarily accessible to similarly situated faculty colleagues, the standards may vary from one department to another according to local culture and tradition. It is the responsibility of the Technology Transfer Office to consult with the dean, chair, or equivalent supervisor of the Creator of a Work in question, in making a determination of whether the Creator has made substantial use of University resources in connection with creation of the Work. If the parties disagree with the determination of the Technology Transfer Office, the matter shall be referred to the cognizant vice president or similar administrator, whose decision shall be final.

Each department or college may promulgate guidelines that will guide determinations of “substantial use” for that department or college. Such guidelines should be tailored to reflect the traditional practices on copyright of scholarly materials that exist in the discipline, and are subject to the approval of the cognizant dean and Senior Vice President.

### IV. COMMERCIALIZATION AND REVENUE SHARING.

#### A. Obligation to Disclose and Assign

The Creator shall promptly disclose to the Technology Transfer Office the creation of any Work in which the University has an ownership interest, as provided in Section II of this policy.

The student, faculty or staff Creator of a Work owned by the University according to the provisions of this Policy shall promptly execute an assignment of all their rights to the University when requested to do so by the administration. The Creator shall cooperate fully with the University and the Technology Transfer Office in further protection, promotion or dissemination of the Work.

The University will promptly execute any transfers of copyright ownership or other agreements needed to carry out this policy.

B. Revenue Sharing.

1. The Creator of a Work that is owned by the University, other than a Creator of a work made for hire, shall receive a share of any royalty income or other revenue realized by the University as Owner, from the sale, licensing or other commercialization of the Work. The Creator of a Work made for hire may receive a share of royalty income or other revenue, provided that an appropriate agreement is entered into between the University and the Creator prior to the inception of the Work.
2. The Creator's share of income shall be based on a percentage of such income or revenue remaining after reimbursement of all the University's direct costs of copyright registration, licensing and other legal protection of the Work ("net revenue"). The Creator's share (which, in the case of co-Creators, shall be divided between them equally or as they shall agree in their sole discretion) shall normally be forty percent (40%) of the first twenty thousand dollars (\$20,000) of net revenue, thirty-five percent (35%) of the next twenty thousand dollars (\$20,000) of net revenue, and thirty percent (30%) of any additional net revenue received by the University from the Work.
3. Upon request, an accounting of all costs and calculations of monies paid in connection with a Work of which the University is the Owner shall be made available to the Creator of the Work within a reasonable time.

C. Creators' Rights in University-Owned Works

1. The University will make reasonable efforts to consult with the Creator of a Work with respect to proposed uses to be made of the Work before it is licensed or sold to a third party. When disputes over use occur, the matter shall be referred to the cognizant vice president or similar administrator for resolution, in consultation with the Vice President for Research.
2. University-owned Works that have not been licensed or sold shall not be altered or revised without making reasonable efforts to provide the Creators an opportunity to assume the responsibility for the revision. If the Creators decline the opportunity to revise such material, the University shall assign responsibility for the revision in consultation with the appropriate department.
3. The Creator may request that University-owned Works that have not been licensed or sold be withdrawn from use when the Creator or the relevant department deems such use obsolete or inappropriate. The cognizant vice president or similar administrator shall decide disputes over the withdrawal of Works.

Approved: Board of Trustees 5/14/01

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<sup>1</sup>In most situations, the Creator, as defined herein, is the “author,” as defined in the Copyright Act, and is initially the owner of the copyright in the Work. In the case of a “work made for hire,” however, the Copyright Act defines the employer of the Creator or the person who commissioned the Work as the Author and owner of the Copyright. Thus, this Policy uses the term Creator rather than author.

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