

Policy: 7-003 Rev:

Date: July 26, 1983

**Subject: COPYRIGHT POLICY: OWNERSHIP****I. PURPOSE AND SCOPE****Purpose**

The purpose for the university's copyright policy is to outline the respective rights members of the faculty, staff and student body have in intellectual materials created while affiliated with the university.

**Nature of Rights Protected by Copyright**

Copyright is a form of protection given by law to authors of intellectual works. Only authors or those to whom authors have assigned their rights may claim copyright. The owner of a copyright retains and controls the right to print and reprint copies of the work; to sell or distribute copies of the work; to transform or revise the work; and to perform or display the work to the public.

**Scope of Works Protected by Copyright**

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; and
8. computer programs and documentation.

The requirement the law places on the copyrightability of any of the above works is that the work must be in a form that can be perceived directly or by means of a machine or other device. Both published and unpublished works are under statutory protection.

**Limitations on Copyright Coverage**

Copyright protection is not extended to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of how it is described, explained, illustrated or embodied.

**Copyright Ownership**

The university encourages the preparation and publication of copyrightable works that result from teaching, research, scholarly and artistic endeavors by members of the faculty, staff and student body by upholding ownership rights of authors in their writings and scholarship that result from usual teaching, research or artistic activities. Because of advancing technology, new forms of educational materials are being developed which require a substantially greater level of direct support from the university than does the writing of a "traditional" textbook and the like. The extraordinary use or purchase of equipment and production facilities, computers, and the expertise of a variety of individuals with special training may be required to augment the talents of an author. When the investment of time and money by the author and the university differs substantially from that involved in the creation of customary educational material, such material shall be designated as university-sponsored and the university may claim copyright.

## II. DEFINITIONS

For purposes of this policy, the following definitions will apply:

**Copyrightable Material.** The term "material" refers to all copyrightable works, including but not limited to, writings, lectures, musical or dramatic compositions, sound recordings, films, videotapes and other pictorial reproductions, computer programs, listings, flow charts, manuals, codes, instructions, and software.

**Copyright Owner.** The term "owner" refers to the party who owns or controls the rights to copyrightable material and who has the right to sell, assign, distribute, or license the use of such material.

**Publication.** Publication occurs when by consent of the copyright owner the original or tangible copies of a work are sold, leased, loaned, given away, or otherwise made available to the general public.

## III. OWNERSHIP

### A. Authors

1. The university does not claim copyright on material resulting from teaching, research, scholarly and artistic activities such as scholarly articles, research bulletins, monographs, paintings, musical and dramatic compositions, sculptures, architectural designs, books, textbooks, submissions to scientific and technical journals, reference works and the like, unless there is substantial support beyond regular salary, customary use of secretarial assistance, and the use of libraries, laboratories, studios, or computer time on equipment on hand, from any university department or unit established to furnish such support or assistance.
2. The university will not make any claim to copyrightable material resulting from the preparation and taping of lectures or other instructional units developed by a single member of the faculty, staff or student body, and using minimal technical help from Instructional Media Services, including editorial advice, or, to material based on essentially individual research, but supported by the university in the form of customary facilities, materials and limited parttime research assistance, sabbatical leaves, and some types of university faculty grants.

- a. Minimal technical help is defined as use of time of a technician employed to provide such service during normal working hours.

## B. The University of Utah

Copyrightable material resulting from individual or group effort receiving a substantial level of direct support from the university or its departments or units in the form of money, personnel or facilities beyond those levels of support described in Section A above, is regarded as university-sponsored and shall be the property of the university, and at the university's option shall be copyrighted in the name of the university except for material produced or developed under grants from agencies of the federal government or other private sources (see Section C, following). A substantial contribution, further, is one which is significant in the context of the situation and the practices of particular disciplines, schools and departments or other units of the university.

1. A substantial level of direct university support can generally be defined as follows:
  - a. When equipment, materials, and staff services from any of a variety of university departments other than the home department or unit are used in the development of copyrightable materials at no expense to the author or home department/unit.
  - b. When the author has received support for the development of copyrightable materials, such support being in the form of money in excess of normal salary, reduced teaching load, release time, or other resources from a department, college, or any unit of the university.

In all cases of substantial university support, an appropriate agreement between the university and the author(s) shall be entered into prior to the beginning of the project. (See Appendix A for model agreement.) Questions as to whether particular copyrightable materials are considered university-sponsored should be addressed to the university copyright coordinator in consultation with appropriate departments or units.

2. Copyrightable material produced as the primary purpose of employment is considered a work-for-hire. In cases where the university hires work, a written work-for-hire agreement shall be prepared outlining that the university will retain all rights to the material. (See Appendix B for model agreement.)
  - a. When the university, or one of its colleges, schools, departments, or units has assigned a member of the faculty, staff or student body to develop copyrightable material during time that is being compensated for by funds administered by the university, the university shall own the rights unless an agreement in writing to the contrary has been reached between the author and the university.

## C. Extramural Sponsor.

Copyrightable material produced under grants from the federal government or other private agency shall be subject to conditions of the contract or grant with respect to ownership,

distribution and use, and other residual rights.

If the funding agency does not claim copyright, such right shall vest in the university and Section B shall apply. Under grants from many federal agencies, an author is permitted to arrange for copyright without approval from the agency. In either case, the university or the author is required to execute a royalty-free, nonexclusive, and irrevocable license to the government to use the copyrighted work for government purposes.

If the funding agency desires to claim copyright, the university shall try to negotiate reasonable sharing of rights for the author and/or the university.

#### IV. REVENUE SHARING

##### A. Authors.

Authors of intellectual works described in III.A. 1 and 2 above, own the copyrights in their works, and are free to publish them, register the copyright, and receive any resulting revenues from their sale.

##### B. The University.

1. When the university, at its option, obtains a copyright for materials resulting from an effort regarded as university-sponsored, the author(s) may be allowed to share in any royalties which accrue from the sale or lease of such material outside the university provided an appropriate agreement is entered into prior to the beginning of the project. (See Appendix A for model agreement.) The agreement shall take into account the effort and contribution of the author(s) as well as the development costs to the university when setting the royalty to the author and income and recoupment costs to the university.
2. When an author(s) contributes a personal work to the university, a written agreement accepting the contribution must be accomplished. The agreement shall take into account whether the author(s) shall share in any royalties resulting from the sale or lease of the contributed work. (See Appendix C for model agreement.) All such agreements shall be routed through the Development Office.
3. When the university obtains a copyright and assumes the obligation of publishing and marketing a work, an agreement that sets forth a schedule for sharing royalty income between the university unit responsible for the production and the author(s), and summarizes commitments and/or promises made by either of the parties to the other shall be accomplished. Although each production effort will receive separate consideration depending on the contribution of the author(s) and the university, a general schedule for sharing income is as follows:
  - a. Eighty percent of gross proceeds of any sale will be allocated to the university unit incurring the cost of publishing and marketing the work. Twenty percent of gross proceeds will be distributed to the author(s) who may elect to have up to one quarter of his/her share distributed to his/her home department or unit.

- b. When the costs of publishing and marketing are recouped from the 80 percent share of proceeds, the balance of proceeds will be distributed so that the author(s) will receive 30 percent of the gross proceeds, and the balance will be divided equally between a university copyright development fund and the university unit responsible for commercializing the copyrighted work. The author(s) may elect to have the home department/unit receive 15 percent of the gross proceeds from the university copyright development fund share.
4. When the university does not act directly as the publisher of copyrighted materials, but merely contracts with a commercial publisher for that function on a royalty basis:
  - a. The author(s) will be allocated 80 percent of the royalty income paid by the publisher to the university, and the university copyright development fund will receive the balance.
  - b. The 80 percent allocation described in a above will be subject to modifications made by agreement between the university and the author(s). For example, the author(s) may agree that all or a part of their personal allocations be deposited in a department development account established to nurture and support further research and development of copyrightable materials.
  - c. The 80 percent allocation may be subject also to modification so that the university may recoup administrative costs beyond the ordinary.
- C. In cases of extramural funding, where the university and the funding agency have negotiated a reasonable sharing of any income resulting from the commercialization of sponsored copyrighted materials, the author may appropriately share in any income. The nature and extent of author participation in royalty income shall be subject to sponsor and university regulations.

## V. USE OF UNIVERSITY-SPONSORED MATERIAL

The university will consult or provide a reasonable opportunity for the author's consultation with respect to use made of a copyrighted work within the university or before any license for its use outside of the university is granted. When unresolved matters on use occur, the matter shall be referred to the vice president for academic affairs for resolution or referral for arbitration.

## VI. REVISION OF MATERIALS

University-sponsored materials shall not be altered or revised without providing the author(s) a reasonable opportunity to assume the responsibility for the revision. If the author(s) decline(s) the opportunity to revise such material, the assignment of responsibility for the revision will be made by the vice president for academic affairs in consultation with the appropriate department.

## VII. WITHDRAWAL OF MATERIALS

University-sponsored materials shall be withdrawn from use when such use is deemed obsolete or inappropriate by the author(s) or the appropriate department.

## VIII. RELEASE

The university may release to the author(s) the right to any work copyrighted in the name of the university.

## IX. LIABILITY

An author of a work produced as a result of a special assignment or commission, or with substantial university or outside support, must warrant that the work does not infringe on any existing copyright or other legal rights; that work not identified as quotations is the expression or creation of the author; that necessary permission for quotation and the like has been obtained; and that the work contains no libelous material nor material that invades the privacy of others.

## X. PROCEDURES

- A. The responsibility of coordinating matters involving copyright, including the making of contracts and the waiving or assigning rights, is assigned to the university copyright coordinator in consultation with interested individuals and departments/units.
- B. The responsibility for the commercial marketing of most university-owned copyrighted materials, e.g., printed and media materials, and for maintaining appropriate fiscal records is assigned to Instructional Media Services. In some cases, e.g., computer-assisted and software programs, responsibility for licensing and marketing is better served by being developed through the University Research Foundation and its Patent and Product Development Office.
- C. The department chairperson or administrative head of a department or unit which is considered the source of funding "university-sponsored" material is responsible for ensuring the agreements required in III.B., 1 and 2 are accomplished.
- D. Other sample contracts in addition to those appended to this policy are available through Instructional Media Services, University of Utah Press, the Patent and Product Development Office, the Development Office, and the Office of Copyright Coordinator.
- E. All university-owned copyrights shall be protected by notice of copyright in the name, "The University of Utah," and may be registered as such.

Approved: University Senate 6/6/83

Approved: Institutional Council 6/13/83

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## APPENDIX A

### COPYRIGHT AGREEMENT For University-Sponsored Works

Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between  
 \_\_\_\_\_  
 (hereinafter called AUTHOR) and THE UNIVERSITY OF UTAH, Salt Lake City, Utah  
 (hereafter called UNIVERSITY).

RECITALS

1. AUTHOR has requested from the UNIVERSITY (department/unit) additional support to prepare, write, create, or develop certain copyrightable materials.

2. The copyrightable materials the AUTHOR has requested support to develop are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (hereinafter called THE WORK).

3. UNIVERSITY has expressed its willingness to provide \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

to aid AUTHOR in the development of THE WORK, provided AUTHOR agrees to the terms hereinafter stated.

AGREEMENT

It is Therefore Agreed as Follows:

First: AUTHOR shall develop and supply to UNIVERSITY THE WORK, and hereby confirms that such development is being done with additional support from the UNIVERSITY and is therefore considered a university-sponsored work as defined in III.B. 1, Policy No. \_\_\_\_\_, PPM.

Second: AUTHOR hereby confirms that UNIVERSITY, its successors and assigns, owns the entire title, right, interest, ownership, and all subsidiary rights in and to THE WORK, including but not limited to the right to secure copyright therein and to the registration thereof in UNIVERSITY'S name and the right to secure any renewals, reissues, and extensions of any such copyright or copyright registration in the United State or any foreign country and the right to revise THE WORK under the provisions of Section VI of this policy.

Third: Whether THE WORK shall be copyrighted in the United States or in any foreign country shall be at the sole discretion of UNIVERSITY. UNIVERSITY may print, reprint, publish, copy, or vend THE WORK without copyrighting THE WORK if University, in its sole discretion, so desires. In the event UNIVERSITY should choose to copyright THE WORK, UNIVERSITY, as it deems desirable, may nevertheless grant to any party the right to, and may itself, print, reprint, publish, copy vend, or otherwise use THE WORK or any subsidiary right without requiring the payment of royalties or other consideration for such right whether receiving royalties or not.

Fourth: Although UNIVERSITY need not require the payment of royalties or other consideration for the right to print, reprint, publish, copy, vend, or otherwise use THE WORK or any subsidiary right, in any case in which UNIVERSITY does receive royalties or other consideration for the right to print, reprint, publish, copy, vend, or otherwise use THE WORK or any subsidiary right, AUTHOR shall be paid \_\_\_\_\_ percent of the royalties or other consideration actually received by UNIVERSITY.

Fifth: An annual account of the royalties and other consideration received as of December 31st shall be made by UNIVERSITY and reported to AUTHOR in June of the following year at which time AUTHOR'S share of royalties or other consideration shall also be payable.

Sixth: AUTHOR shall not prepare or assist in the preparation of any other material which shall in the opinion of UNIVERSITY interfere with or injure the copyrightability or future sale of THE WORK or any subsidiary right thereof, except to the extent permitted in Clause THIRD thereof.

Seventh: AUTHOR warrants and guarantees to UNIVERSITY that THE WORK will be original on AUTHOR'S part except for such material from copyrighted sources as is reproduced by the written permission of the copyright holder; that THE WORK will in no way constitute a violation of or an infringement upon any copyright belonging to any other party; that THE WORK will contain no material previously published and or copyrighted by AUTHOR unless such prior material is noted in THE WORK; and that THE WORK will contain no matter which is libelous or in any way contrary to law.

Eighth: As used herein, "subsidiary rights" shall include: serial rights before and after publication, dramatic, public reading, and other nondramatic performing rights; motion picture rights; translations, digests, abridgments, selections, and anthologies, also mechanical visual as well as microfilm and microprint (other than motion picture); sound and visual reproducing and recording rights (including television and radio broadcasting; phonographic, wire, and tape recordings other than motion picture); videotape, videodisc, lyric rights, and adaption of THE WORK for commercial use.

Ninth: All terms of this Agreement are applicable to any portion or part of THE WORK as well as THE WORK in its entirety.

Tenth:

(a) If "AUTHOR" as used in this Agreement refers to more than one person, the share of royalty established in Clause FOURTH hereof shall be divided among them according to some mutually acceptable basis to be established in writing and delivered to UNIVERSITY prior to the filing of an application for copyright registration for THE WORK by UNIVERSITY.

(b) In the event said persons should fail to agree upon a mutually acceptable division prior to the filing of an application for copyright registration by UNIVERSITY, the share of royalty established in Clause FOURTH hereof shall be divided equally among said persons.

Eleventh: The Agreement constitutes the entire Agreement between the parties hereto and there are no collateral oral or written agreements or understandings; this Agreement supersedes any prior oral or written agreement or understanding between the parties.

Twelfth: Regardless of the place of its physical execution, this Agreement shall be interpreted under the laws of the State of Utah.

Thirteenth: In the event THE WORK is a film, tape, videodisc, or television presentation, UNIVERSITY agrees that it shall not print, reprint, tape, copy, vend, or otherwise use THE WORK or any subsidiary right thereof after \_\_\_\_\_, 19\_\_\_\_, without the written permission of AUTHOR, or license others to use THE WORK after \_\_\_\_\_, 19\_\_\_\_, without the written permission of AUTHOR.



Fourteenth: The special provisions of this Agreement are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have hereunto set their hands and seals the day and year first written above.

THE UNIVERSITY OF UTAH

By: \_\_\_\_\_

Title: \_\_\_\_\_

AUTHOR

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

APPENDIX B

COPYRIGHT AGREEMENT  
For Work-for-Hire Works

Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between

(hereinafter called AUTHOR) and THE UNIVERSITY OF UTAH, Salt Lake City, Utah (hereafter called UNIVERSITY).

RECITALS

1. UNIVERSITY has requested AUTHOR to prepare, write, create, or develop certain copyrightable materials.

2. The copyrightable materials AUTHOR has been requested to develop are:

\_\_\_\_\_  
\_\_\_\_\_ (hereinafter called THE WORK).

3. AUTHOR desires to undertake and complete THE WORK if certain aid for that purpose is proved by UNIVERSITY.

4. UNIVERSITY has expressed its willingness to provide \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

to aid AUTHOR in the development of THE WORK, provided AUTHOR agrees to the terms hereinafter stated.

AGREEMENT

It is Therefore Agreed as Follows:

First: AUTHOR shall develop and supply to UNIVERSITY THE WORK, and hereby confirms that such development is being done within the scope of AUTHOR'S employment with UNIVERSITY; and therefore is a "work for hire" as defined in 17 USC 201(b).

APPENDIX C

COPYRIGHT AGREEMENT  
For Contributed Works

Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between \_\_\_\_\_  
(hereinafter called AUTHOR) and THE UNIVERSITY OF UTAH, Salt Lake City, Utah  
(hereafter called UNIVERSITY).

RECITALS

1. AUTHOR has prepared, written, created, or developed certain copyrightable materials or works.
2. The copyrightable materials or works AUTHOR has prepared, written, created, or developed are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (hereinafter called THE WORK).
3. AUTHOR desires to contribute all AUTHOR'S rights in and to THE WORK to UNIVERSITY.
4. UNIVERSITY has expressed its willingness to receive all such rights in and to THE WORK under the terms hereinafter stated.

AGREEMENT

It is Therefore Agreed as Follows:

First: AUTHOR has developed and supplied to UNIVERSITY THE WORK described.