

Copyright Policy of
The University of North Carolina at Chapel Hill

Effective date: August 1, 2001

I. Introduction.

The University of North Carolina at Chapel Hill is dedicated to instruction, research, and providing service to the people of North Carolina and of the nation. It is the policy of this University that its faculty, staff, and students carry out their scholarly work in an open and free atmosphere, and that consistent with applicable laws and policy they publish the results of such work without restraint. To those ends, and in order to effect provisions of the *Copyright Use and Ownership Policy of the University of North Carolina*, this *Copyright Policy* is adopted.

II. Scope and Coverage.

This Policy applies to the faculty, staff, and students of the University. Compliance with the terms of this Policy is a condition of employment for University faculty and staff, and of enrollment for University students. This Policy is supplemental to the *Copyright Use and Ownership Policy of the University of North Carolina*, and is subject to any applicable laws and regulations or to specific provisions in grants or contracts that govern rights in copyrighted works created in connection with sponsored research.

III. Creation and Duties of the University Copyright Committee.

A. Composition of the Committee.

The Committee is appointed by the Chancellor. It shall consist of (i) faculty members, who shall constitute a majority of the members, (ii) one or more graduate students, serving one-year renewable terms, and (iii) members from campus units that are involved in intellectual property matters, such as the Office of Technology Development.

B. Duties.

The Copyright Committee shall have such responsibilities as the Chancellor may specify, including but not limited to the following duties:

- (1) Monitoring trends in such areas as institutional or consortial copyright use policies, changes in copyright ownership models, and guidelines for fair use of information in all formats;
- (2) Identifying areas in which policy development is needed and recommending to the chancellor new or revised institutional policies and guidelines;
- (3) Cooperating with the administration to propose University policies and guidelines regarding ownership and use of copyrighted or licensed scholarly works;
- (4) Assisting in identifying educational needs of the faculty and others related to compliance with copyright policies and guidelines, and advising on appropriate ways to address those needs; and

- (5) Under procedures specified below, hearing and recommending resolution of disputes involving copyright ownership, unless the copyright ownership issue is referred by the Provost to the appropriate University grievance committee because of its relation to other matters in dispute between the parties.

IV. Use of Copyrighted Works by Faculty, Staff and Students

A. Appropriate Use of Copyrighted Works.

The University is committed to complying with all applicable laws regarding copyrights. As an institution devoted to the creation, discovery and dissemination of knowledge, the University supports the responsible, good faith exercise of full fair use rights, as codified in federal law at 17 U.S.C. § 107, by faculty, librarians, staff and students in teaching, research, and service activities.

Except as allowed by law, it is a violation of this Policy and law for University faculty, staff, or students to reproduce, distribute, display publicly, perform, digitally transmit (in the case of sound recordings), or prepare derivative works based upon a copyrighted work without permission of the copyright owner.

B. Fair Use.

(1) Permissible Use.

Under United States Copyright law, the “fair use doctrine” allows certain specified uses of a copyrighted work without requiring prior permission of the copyright holder under certain situations. As stated in the *Copyright Use and Ownership Policy of the University of North Carolina*, the University supports “the responsible, good faith exercise of full fair use rights, as codified in 17 U.S.C. § 107, by faculty, librarians, and staff in furtherance of their teaching, research and service activities.”

(2) Elements of Fair Use; Good Faith Consideration Required.

University faculty or staff who propose to make fair use of a copyrighted work must consider in advance the applicability of four statutory factors to be weighed in making a fair use analysis. These factors are:

- (a) The purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes;
- (b) The nature of the copyrighted work;
- (c) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (d) The effect of the use upon the potential market for or value of the copyrighted work.

(3) Procedure for Making Fair Use Determinations.

The University Copyright Committee, together with the Office of University Counsel, shall issue and as necessary revise guidelines to assist University faculty, staff, and students in making fair use evaluations. Faculty, staff, or students who require assistance with fair use questions are encouraged to consult the Office of University Counsel.

(4) Infringement.

Determination of whether a specific use of a copyrighted work may constitute infringement shall be made by the Office of University Counsel.

V. Copyright Ownership.

Ownership of copyright in copyrighted works shall depend on the category of the work in question and on the status of its creator. Categories of work defined under this Policy include:

- (1) Traditional Works or Non-Directed Works;
- (2) Traditional Works or Non-Directed Works Involving Exceptional Use of University Resources;
- (3) Directed Works;
- (4) Sponsored or Externally Contracted Works;
- (5) Works Made for Hire;
- (6) Works by Independent Contractors; and
- (7) Student Works.

A. Works Created by Faculty or EPA Non-Faculty Employees.

(1) Traditional Works or Non-Directed Works.

(a) Definition.

Traditional Works or Non-Directed Works are pedagogical, scholarly, literary, or aesthetic works resulting from non-directed effort.

(b) Ownership.

- (i) The creator of such a work shall own the work unless it is a Directed Work, a Sponsored or Externally Contracted Work requiring University ownership of copyright, or a Work for Hire (defined below.) As a condition of employment, faculty and EPA non-faculty creators of a Traditional or Non-Directed Work shall be deemed to have granted the

University a non-exclusive, non-transferable, royalty-free license to use the work for the University's own educational or research use unless such a license will impede scholarly publication or similar activities.

- (ii) Traditional Works or Non-Directed Works for which authorship cannot be attributed to one or a discrete number of authors but instead result from simultaneous/sequential contributions over time by multiple authors shall be owned by the University.

(c) Commercialization; assignment to University.

Where a University faculty or EPA non-faculty creator of a Traditional or Non-Directed Work desires assistance from the University in commercializing the work, the creator shall report the work to the Office of Technology Development using such forms and procedures as that Office shall establish, and if in its discretion it agrees to accept the work for commercialization, the Office of Technology Development shall undertake best efforts to commercialize the work. If the University is to be involved in commercializing a Traditional or Non-Directed Work, the creator shall assign the work to the University under an Assignment Agreement including but not limited to provisions outlining the commercialization responsibilities of the Institution and a mechanism for the sharing of commercial proceeds with the creator.

(d) Allocation of Commercialization proceeds.

When any Traditional or Non-Directed Work is assigned to the University and commercialized by the University, income from such commercialization shall be apportioned according to the formula set out in the University *Patent and Copyright Procedures*.

(2) Traditional Works or Non-Directed Works Involving Exceptional Use of University Resources.

(a) Definition.

Exceptional use of University resources has occurred where the University has provided support for the creation of the work with resources of a degree or nature not routinely made available to faculty or EPA non-faculty employees. Exceptional use of University resources may include:

- (i) Waiver of fees normally required to use specialized facilities such as equipment, production facilities, service laboratories, specialized computing resources, and studios;
- (ii) Institutional funding or gifts in support of the work's creation; and
- (iii) Reduction in levels of teaching, service or other typical university activities (e.g., course load, student advising responsibilities,

division/department meetings, office hours, administrative responsibilities) specifically to facilitate creation of the work.

Ordinary or limited use of computers, laboratory space, libraries, office space or equipment, routine secretarial services at routine levels, telephones, and other informational resources shall not be considered exceptional use of University resources.

(b) Ownership.

Traditional Works or Non-Directed Works Involving Exceptional Use of University Resources shall be owned by the University. Whether an individual work has been created through exceptional use of University resources shall be determined initially by the chair or director of the department in which the creator has principally been involved or in which he or from which he or she has received resources to fund the work, taking into account the nature and amount of resources customarily made available to faculty or staff in that department.

(c) Release to Creator.

With agreement of the department chair as defined above, the Director of the Office of Technology Development may release or transfer the University's rights in a Traditional Work or Non-Directed Work created through exceptional use of University resources to the work's creator through an appropriate written agreement.

(d) Release Agreement.

Any agreement for release to a creator of a Traditional Work or Non-Directed Work created through exceptional use of University resources shall include provisions that:

- (i) The University shall have a non-exclusive, non-transferable, royalty-free license to use the work for the University's own educational or research use; and
- (ii) If commercialization of the work generates income, either (a) the creator shall reimburse the University for the exceptional resources provided the creator, or (b) the creator shall share income from such commercialization with the University, in an amount to be negotiated between the creator and the Office of Technology Development. Proceeds from commercialization shall be allocated as provided in Section V.A.(1)(d) above.

(e) Selection of release options; appeal.

The Director of the Office of Technology Development, on consultation with the creator's chair, shall determine which of the options available under item (d)(ii) above to be selected in conjunction with the release of such a work to its

creator. Disputes regarding whether a work has been created through use of exceptional University Resources shall constitute disputes regarding ownership to be resolved under the dispute resolution procedures specified below. However, decisions regarding financial terms made under item (d)(ii) above shall not be subject to appeal under this Policy. In the event that the creator and the University are unable to reach agreement regarding such financial terms, ownership of the work at issue shall remain with the University.

(f) Joint ownership.

In addition to the foregoing provisions for release to the creator of a Traditional or Non-Directed Work involving exceptional use of University resources, the University, through the Office of Technology Development in consultation with the creator's chair, and the creator may alternatively negotiate for joint ownership of the work.

(3) Directed Works.

(a) Definition.

Directed Works are works that are specifically funded or created at the direction of the University. Such funding need not constitute exceptional use of University resources in order for the work to be considered a Directed Work. Directed works shall also include works created by faculty, staff, or students in an institute, center, department, or other unit that, with approval of the Chancellor, has adopted rules providing that copyright in materials prepared by such faculty, staff, or students in the course of their professional work or in the course of study with that unit vests in the University and not in its creator.

(b) Ownership.

The University shall own copyright in Directed Works. Where practicable in the estimation of the creator's chair, and subject to any additional terms or limitations made necessary by University licensing agreements, the creator shall be granted a non-exclusive, non-transferable, royalty-free license to the work for the creator's own educational or research use.

(c) Release.

The University may release or transfer ownership in a Directed Work to the creator.

(d) Release Agreement.

Any agreement for release to a creator of a Directed Work shall include provisions that:

- (i) The University shall have a non-exclusive, non-transferable, royalty-free license to use the work for the University's own educational or research use; and/or
- (ii) If commercialization of the work generates income, either (a) the creator shall reimburse the University for the resources provided the creator in conjunction with creation of the work, or (b) the creator shall share income from such commercialization with the University, in an amount to be negotiated between the creator and the Office of Technology Development. Unless otherwise directed by the Chancellor or his designee, two-thirds of the proceeds from commercialization of the work shall be allocated to the creator's department, and one-third to the Office of Technology Development.

(e) Selection of release options; appeal.

The Director of the Office of Technology Development, on consultation with the creator's chair, shall determine which of the options available under item (d)(ii) above will be selected in conjunction with the release of such a work to its creator. Disputes regarding whether a work is a Directed Work shall constitute disputes regarding ownership to be resolved under the dispute resolution procedures specified below. However, decisions regarding financial terms made under item (d)(ii) above shall not be subject to appeal under this Policy. In the event that the creator and the University are unable to reach agreement regarding such financial terms, ownership of the work at issue shall remain with the University.

(f) Joint Ownership.

In addition to the foregoing provisions for release to the creator of a Directed Work, the University, through the Office of Technology Development in consultation with the creator's chair, and the creator may alternatively negotiate for joint ownership of the work.

(4) Sponsored or Externally Contracted Works.

(a) Definition.

A **Sponsored or Externally Contracted Work** shall be any copyrighted work developed using funds supplied under a contract, grant, or other arrangement between the University and a third party, including a sponsored research agreement.

(b) Ownership.

- (i) Unless the agreement expressly requires copyright ownership by the University or conveyance of rights to a third party, the creator of a Sponsored or Externally Contracted Work shall own the work. As a condition of employment, faculty and EPA non-faculty creator-owners of

a Sponsored or Externally Contracted work shall be deemed to have granted the University a non-exclusive, non-transferable, royalty-free license to use the work for the University's own educational or research use.

- (ii) The University will own a Sponsored or Externally Contracted Work where the relevant agreement requires copyright ownership by the University or conveyance of rights to a third party, in which case the University will convey rights to the third party as required. In such cases the creator of the copyrighted work shall be required to report the work to the Office of Technology Development, using such forms and procedures as that Office develops. Where a proposed sponsored research agreement or research grant will require that copyrighted works be owned by the University or a third party, the Office of Research Services should inform the relevant Principal Investigator of the copyright provisions and secure his or her consent to such provisions before the agreement is signed or the grant accepted.

(c) **Release.**

Sponsored or Externally Contracted Works owned by the University may be released to the creator or jointly assigned to the creator and the University, through the procedures mandated for Directed Works, where the University has ascertained that such release will not conflict with the terms of the relevant agreement or grant or with written consent of the other party to the agreement or grant.

B. Works Created by SPA Staff Employees Considered Works Made for Hire .

(1) **Definition.**

For purposes of this Policy, a “**work made for hire**” is:

- (a) A work prepared by an employee within the scope of his or her employment; or
- (b) A work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

(2) **Ownership.**

Works made for hire by SPA staff shall be owned by the University. Exceptions to University ownership may occur where

- (a) The University with approval of the Chancellor or his designee enters into an agreement with an SPA employee in advance of creation of the copyrighted work specifying that the work shall be owned in whole or in part by the employee;
- (b) University ownership is waived by the Chancellor or his designee; or
- (c) The SPA Staff creator is an author or co-author of a Traditional or Non-Directed Works, but only to the extent necessary to allow the SPA Staff creator to assign rights to academic publishers for publication made with no more than nominal consideration to the creators.

C. Works by Independent Contractors.

Works produced for the University by independent contractors shall be considered Works Made for Hire and shall be owned by the University. No unit or department shall enter into arrangements for work to be produced by an independent contractor without a written contract, signed by an authorized University official, including but not limited to a provision that the University shall own copyrighted works produced by the independent contractor.

D. Student Works.

(1) Definition.

Student Works are papers, computer programs, theses, dissertations, artistic and musical works, and other creative works made by University students.

(2) Ownership and Use.

- (a) Students shall own copyright in Student Works except in the following cases:
 - (i) Copyright to Traditional Works authored by faculty with assistance from a student shall be owned by faculty or the University.
 - (ii) The University shall own a Student Work that is a Sponsored or Externally Contracted Work where this Policy so requires, and ownership and use of such works shall be as specified in section V.A.(4) above.
 - (iii) Student Works created in the course of the student's employment by the University shall be considered Works Made for Hire, and ownership and use of such works shall be as specified in Section V.B above.
- (b) Student Works that constitute notes of classroom and laboratory lectures and exercises shall not be used for commercial purposes by the student generating such notes.

VI. Works subject to both copyright and patent protection.

Where an invention is thought to be subject to protection under both patent law and copyright law, if the University through the Office of Technology Development determines to retain title to its

patent rights, the inventor/creator shall assign copyright to the University. On commercialization of such works, the inventor/creator shall be compensated in accordance with the provisions of the University of North Carolina Patent Policy and the UNC-CH Patent and Copyright Procedures. The Office of Technology Development may on its own initiative investigate whether a copyrighted work reported to it may also be subject to patent protection.

VII. Dispute Resolution.

A. Jurisdiction.

Any University faculty or staff employee or student may seek resolution of a dispute regarding ownership of a copyrighted work governed by this Policy by filing a written request with the Provost. The Provost shall refer such requests to the Chair of the University Copyright Committee, who shall appoint a panel of not less than three members of the Copyright Committee to hear such dispute. Any copyright ownership issue may be referred by the Provost to the appropriate University grievance committee because of its relation to other matters in dispute between the parties.

B. Conduct of Appeal.

In its discretion the dispute resolution panel may elect to conduct a hearing into the matter or may make a recommendation based upon the written record, provided that all parties to the dispute are given an opportunity to present evidence and arguments in support of their respective positions. Each party shall provide the other party with a copy of any written materials submitted to the panel simultaneously with submission of such materials to the panel. Any hearing will be conducted following procedures set forth by the panel or promulgated by the Copyright Committee. No party shall have the right to be represented by counsel before the panel, but any party may be accompanied at a panel hearing by an adviser of his or her choosing, who shall not participate in the hearing.

C. Disposition.

Each panel shall report its findings and conclusions to the Provost on behalf of the Chancellor in writing along with a written recommendation for disposition of the matter, within forty-five days of appointment of the panel by the Chair of the Copyright Committee. Provided, that for good cause the Chair of the Copyright Committee may extend the time period for such report by not more than an additional thirty days. Copies of such findings, conclusions and recommendation shall be provided to all parties. On receipt of such findings, conclusions and recommendation, the Provost shall issue a written decision in the matter. The Provost's decision shall be final, subject to appeal to the Board of Trustees.