



01.210

COPYRIGHT USE AND OWNERSHIP POLICY

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| Authority: | Board of Trustees |
| History: | Approved by Board of Trustees August 3, 2007 |
| Source of Authority: | UNC Policy Manual, Section 500.2 |
| Related Links: | UNCW Policy 01.200; UNCW Copyright Ownership Table |
| Responsible Office: | Academic Affairs |

I. Purpose

The University of North Carolina at Wilmington (UNCW) is committed to complying with all applicable laws regarding copyright. The university, as an institution devoted to the creation, discovery, and dissemination of knowledge, supports (1) 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) copyright ownership for creative, non-directed works by faculty, staff, and students and university ownership of directed employment-related works; and (3) protection of ownership rights for creators of works that require a different ownership model. The objectives of the UNCW Copyright Policy¹ are the same as those set forth in the UNCW Patent Policy, Section II.

II. Scope

The UNCW Patent and Copyright Policies apply to all university employees, both full and part time, including faculty, other professionals exempt from the State Personnel Act, staff subject to the State Personnel Act, and students. These policies, as amended from time to time, shall be deemed to be a part of the conditions of employment of every employee, including student employees, and of the conditions of enrollment and attendance by every student at the institution. Upon prior written agreement between persons and the university, these policies may be applied to persons not associated with the university who make their inventions and original works available to UNCW under circumstances where the further development and refinement of the inventions are compatible with the research programs of the institution.

III. Copyright Use

Pursuant to and consistent with the above, UNCW shall:

A. Inform and educate the university community about fair use and the application of the

four fair use factors as set forth in 17 U.S.C. § 107 and as interpreted in applicable case law. The four fair use factors are:

1. The character and purpose of the proposed use.
2. The nature of the work to be used.
3. The amount and substantiality of the portion to be used.
4. The effect on the market or potential market for the work.

B. Develop and make available resources concerning copyright laws in general and the application of fair use in specific situations.

As a condition of employment and enrollment at the University, faculty, EPA, and SPA staff, and students are required to comply with the University's Copyright Policy and the achievement of ethical research and scholarship. Faculty and staff shall have access to and may request the advice and assistance of the UNCW Office of General Counsel in making 'fair use' determinations regarding their prospective use of copyrighted materials in the classroom or for the purposes of scholarship and research.

IV. Copyright Ownership

With respect to determining ownership of copyright, the university's policy addresses works by category of copyrightable work (including traditional or non-directed works, directed work, and sponsored or externally contracted works) and by category of author (i.e., faculty, EPA and SPA staff, or student). Ownership of copyrighted subject matter, including software, hinges on which category of work and which category of author pertains to the work at issue. (In this Policy the term "Institution" means the University of North Carolina at Wilmington of which an author or work's creator is employed or enrolled.)

V. Copyrightable Works

A. Works by Faculty and EPA Non-Faculty Employees.

1. Traditional Works or Non-Directed Works

a. Definition

A "traditional work or non-directed work" is a pedagogical, scholarly, literary, or aesthetic (artistic) work originated by a faculty or other EPA employee resulting from non-directed effort. (Such works may include, but are not limited to, textbooks, manuscripts, scholarly works, fixed lecture notes, distance learning materials not falling into one of the other categories of this policy, works of art or design, musical scores, poems, films, videos, audio recordings, software, or other works of the kind that have historically been deemed in academic communities to

be the property of their creator.)

b. Ownership

Creator of the work, unless it is a directed work, sponsored work requiring university ownership, or a work for hire described in a written agreement between the work's creator and the Institution. (See section 2. below, for the definition of "work for hire;" under the Copyright Act, the Institution is deemed the "Author" of a work for hire.) If the Institution is to be involved in commercializing a traditional work or non-directed work, the work's creator shall assign the work to the Institution under an Assignment Agreement. The Assignment Agreement shall contain provisions outlining the commercialization responsibilities of the Institution and a mechanism for the sharing of commercial proceeds with the Author. In cases of ownership by the creator of a traditional work, the Institution shall be granted a non-exclusive, non-transferable, royalty-free license for its own educational or research use (hereinafter referred to as a "Shop Right").

2. Traditional Works or Non-Directed Works Involving Exceptional Use of Institutional Resources

a. Definition

"Exceptional use of institutional resources" means institutional support of traditional works with resources of a degree or nature not routinely made available to faculty or other EPA employees in a given area. The following are some examples of situations that are presumed to be "exceptional use": i) waiver of fees normally required to use specialized university facilities (e.g. equipment, production facilities, service laboratories, special computing resources, studios) where those facilities are used in creation of the work; ii) university grants or gifts in support of the work's creation; iii) reduction in levels of teaching, service, or other university employment responsibilities (e.g. course load, student advising, division/department meetings, office hours, administrative tasks) granted solely for the purpose of facilitating creation of a specified work or works; iv) use of university personnel, laboratory space, equipment, or supplies not routinely made available to faculty or other EPA non-faculty employees. "Exceptional use" does not normally include routine use of university personnel, office space, laboratories, desktop computers, libraries, telephones, and information resources in a manner that i) does not interfere with or delay use for university business purposes, and ii) does not result in substantial direct costs to the university.

b. Ownership

Ownership of the works is with the Institution. However, there may be circumstances where the institution wishes to release its rights or transfer rights

to the work's creator. Upon agreement by the appropriate institutional official or body, the Institution may release, transfer, or license, some or all of its rights to the work's creator, provided the Institution retains (a) a Shop Right license for its prospective uses; and/or (b) the right to require reimbursement and/or income sharing from the creator to the Institution if the work produces income for the creator. The parties may also negotiate the joint ownership of such works, including possible income sharing, with the approval of the appropriate institutional official or body.

3. Directed Works

a. Definition

Directed Works are works that are specifically funded or created at the direction of the university. For a work to be considered a "Directed Work" under this policy, the university must inform the faculty in writing in advance of its creation that the work is a "Directed Work." The author/creator and the university shall then execute a written document agreeing that the work shall be considered a 'work for hire' within the meaning of the Copyright Act.

b. Ownership

Ownership of the works is with the Institution. Subject to any terms or limitations made necessary by UNCW's licensing agreements or existing contract obligations, the creator shall be granted a Shop Right for their personal, non-commercial, use of the work.

The institution may agree to release, license, or transfer ownership in a Directed Work to the creator. Provided there is no conflict with existing contractual obligations, the university may release or transfer its rights to the work's creator under an agreement negotiated between the creator and the university, generally the university will retain (a) a Shop Right for its prospective uses, including the preparation of derivative works, and the reproduction, public display and/or dissemination of the subject work; and/or (b) the right to require reimbursement and/or income sharing from the work's creator to the Institution if the work produces income for the creator; or the parties may also negotiate for joint ownership of such works, with the approval of the appropriate institutional official or body.

The parties may negotiate for joint ownership of such works with the approval of the appropriate university official.

4. Sponsored or Externally Contracted Works

a. Definition

A "sponsored or externally contracted work" is any type of copyrighted work developed using funds supplied under a contract, grant, or other arrangement between the Institution and third parties, including sponsored research agreements.

b. Ownership

For a sponsored or externally contracted work created under an agreement that expressly requires copyright ownership by the Institution, the creator of the work must disclose the work to the Institution. Provided there is no conflict with existing contractual obligations, the university may release or transfer its rights to the work's creator under an agreement negotiated between the creator and the university, generally the university will retain (a) a Shop Right for its prospective uses, including the preparation of derivative works, and the reproduction, public display and/or dissemination of the subject work; and/or (b) the right to require reimbursement and/or income sharing from the work's creator to the Institution if the work produces income for the creator; or the parties may also negotiate for joint ownership of such works, with the approval of the appropriate institutional official or body.

The parties may also negotiate for joint ownership of such works, with the approval of the appropriate institutional official or body.

For a sponsored or externally contracted work created under an agreement that does not expressly require copyright ownership in the university or a third party, the creator of the work shall own the work, subject to required disclosure to the university where required under applicable institutional policy. In case of ownership by the work's creator, the university shall be assigned a Shop Right to include its prospective educational and research uses, including rights of reproduction, rendering of derivative works, and the public display and dissemination of such works.

B. Works by SPA Staff.

1. Definition

Works by SPA staff members that are prepared within the scope of their work for the university constitute "Works for Hire" pursuant to and consistent with the U.S. Copyright Act. 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 for hire.

2. Ownership

Works for hire made by SPA staff, prepared within the scope of their employment, shall be owned by the Institution. In special cases, the university may agree to enter into an agreement to transfer, license, or release the work. Provided there is no conflict with existing contractual obligations, the university may release or transfer its rights to the work, generally the university will retain (a) a Shop Right for its prospective uses, including the preparation of derivative works, and the reproduction, public display and/or dissemination of the subject work; and/or (b) the right to require reimbursement and/or income sharing from the transferee, grantee, or licensee.

Alternatively, the parties may also negotiate for the joint ownership of the subject work with the approval of the appropriate institutional official.

C. Works by Independent Contractors.

1. Definition

Works by independent contractors are Works for Hire.

2. Ownership

Works by independent contractors shall be governed by the terms and conditions of the contract under which the work was created. The Institution shall insure that there is a written contract for work by an independent contractor specifying either institutional ownership or a license to use the work(s) for prospective university purposes.

D. Works by Students.

1. Definition

"Student works" are papers, computer programs, theses, dissertations, artistic and musical works, and other creative works made by students attendant to or in the course of their enrollment at the university. (For purposes of this policy, the term "students" includes teaching, graduate, and research assistants.)

Class notes and/or recordings of lectures, in whatever form or medium, are the derivative works of the content creator, and do not constitute an original or creative work of the student rendering the notes or recording(s), and are therefore, not "Student Works".

2. Ownership

Ownership of the copyright to Student Works belong to the student unless the work falls within one of the exceptions described below:

a. Sponsored or Externally Contracted Works

Ownership shall be in accordance with the section of this policy on sponsored or externally contracted works made by faculty or other EPA employees.

b. Works for Hire

Student works created by students in the course of their employment with the University shall be constitute Works for Hire in accordance with the section of this policy on works for hire made by SPA and EPA staff.

c. Class or Laboratory Notes

Student class and lab notes, in whatever medium or form, are generally “derivative works” within the meaning of the Copyright Act, in which case they may be used solely for the student’s personal scholarship or research. Commercial use, display, or dissemination of such notes or recordings, will generally constitute an infringement of the content creator’s copyright subjecting the student to fines and penalties under applicable law. Exceptions to the use of class or lab notes and recordings may be made by the university in the case notes that are derived from exclusively owned university works, or alternatively, may be granted by the individual content creator and/or copyright holder of the work(s) from which the student notes or recordings have been derived.

d. Academic Work

As a condition of enrollment, the university retains a non-exclusive, perpetual, royalty-free, world-wide Shop Right license to use all student works generated in the course of academic work at the university for educational or research purposes (including reproduction, distribution, the making of derivative works, public performances and public display). This university right is subject to the student’s privacy rights under federal law.

VI. Works Subject to Protection by Both Copyright and Patent Laws

In cases where an invention or creation is subject to protection under both patent law and copyright law, if UNCW elects to retain title to its patent rights, then the inventor/creator(s) shall assign copyright to UNCW and the Institution shall be compensated in accordance with the royalty provisions of the UNCW Patent Policy and Procedures.

VII. Administration

The Chancellor designates the Dean of the Graduate School and Research as the administrative officer responsible for implementing this policy with the assistance of the University General Counsel's Office. The IP Committee shall address various matters covered by this policy, including developing policies and procedures designed to supplement and interpret the ownership aspects of this policy, providing advice regarding ownership of specific works, releasing institutional rights, and accepting an assignment of rights to the Institution from an author or creator of a work.

VIII. Dispute Resolution

The Chancellor designates the Intellectual Property Committee as the dispute resolution body for resolving any disputes that may arise among an author, other creator of a work, a third-party sponsor of a work, and a university official or office concerning copyright ownership or other rights. Decisions of the Intellectual Property Committee may be appealed to the Provost, which shall be a final decision.

IX. Service Marks, Trade Marks and Trade Secrets

Service marks and trademarks are the property of the UNCW, and without express authorization from the Chancellor or her designee, no steps shall be taken for securing trademarks or service marks by usage or registration with respect to products resulting from or arising out of research or other activities carried out at the University or developed with the aid of its facilities or staff, or produced through funds administered by the University. If the University licenses its service marks, trademarks, and copyrights, the income from such licensing shall be used to support the research and educational programs of the University and not accrue to the personal benefit of University personnel.

The use of trade secret agreements to protect discoveries and inventions developed at UNCW must be consistent with the aims and purposes of the University of North Carolina. Special provisions may be required to protect the free dissemination of students' degree-related work.

¹ By resolution, the Board of Governors provides the following:

(1) The provisions of the Copyright Policy are effective at the earlier of the following: (1) the date as of which the institution adopts a new or amended policy to conform to the board's policy; or (2) August 1, 2001. Any copyright dispute over a work created prior to the effective date of an institution's policy shall be resolved under such relevant policies and procedures as had existed immediately prior to the effective date, unless the parties to the dispute mutually agree in writing to abide by the new policy.

(2) Nothing in this policy is intended to alter the provisions of *The Code of the University of North Carolina*, Chapter VI: Academic Freedom and Tenure.

(3) The President is authorized to establish such supplemental policies or procedures, not inconsistent with the policy, as the President may deem necessary or desirable to implement or administer the policy. This may include provision for review by the Office of the President of policies or procedures intended by University institutions and agencies to implement the policy.