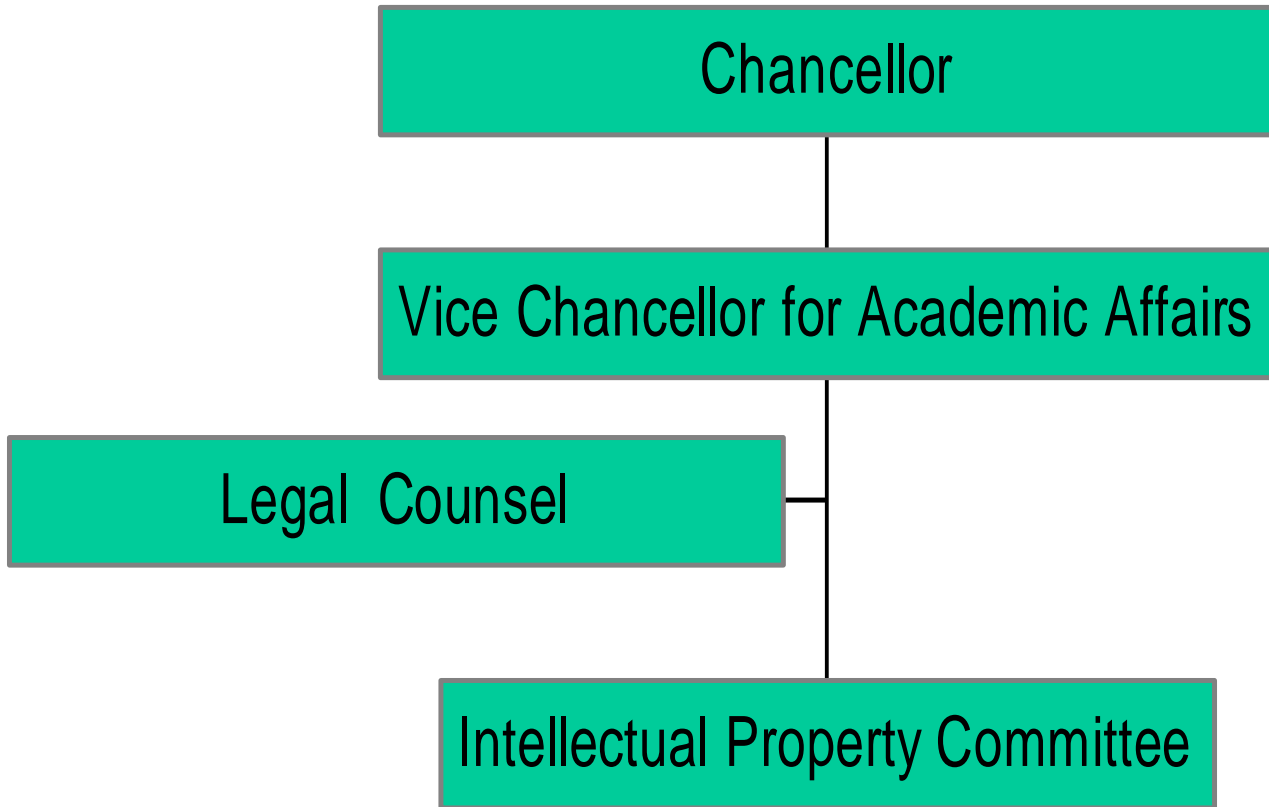


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APPENDIX A



## COPYRIGHT PRIMER

(Reprinted from UNC Intellectual Property Task Force Report, May 2000)

### I. Purpose and Scope

United States Copyright law, as embodied in statutes and court decisions, governs the use of copyrighted materials on the campus of UNC and its constituent institutions. UNC's policy is to conform with all applicable state and federal copyright laws. All members of the university communities must become familiar with the copyright law as it applies to them in conjunction with effective teaching and research. Each constituent institution should craft a copyright use policy that reflects this charge and meets its own institutional needs. The following information should facilitate a more thorough understanding of higher education's rights and responsibilities with respect to copyright law. Not addressed are the respective rights of Authors and their employers in works that may have been created within on-going employment or pursuant to an ad hoc employment agreement. Those rights are addressed by "The University of North Carolina Copyright Ownership Policy."

### II. Perspective

The university community, as a whole, uniquely reflects the entire spectrum of copyright interests from copyright creator and holder to users of copyrighted works. Importantly, the mission of the research university—to create, disseminate, and preserve access to information for the advancement of society—is entirely consistent with the primary purpose of the copyright act as embodied in Article 1, Section 8 of the United States Constitution. That section states that the purpose of copyright is "To promote the Progress of Science and useful Arts, by securing for limited times to Creators... the exclusive Right to their ... writings."

In order to achieve the goal of advancing human knowledge, the Copyright Act provides creative incentives to Creators and inventors by providing a limited monopoly over the use of their works. Creators of copyrighted works get a bundle of exclusive rights that are restricted by a series of limitations that advance the primary purpose of the Copyright Act.

Specifically, the current Copyright Act sets forth major limitations on the rights granted to copyright holders in favor of nonprofit educational purposes:

Section 107—the Fair Use Doctrine

Section 108—the Library Exemptions

Section 110—the Classroom Exemptions

Section 504(c)(2)—the Good Faith Fair Use Defense

### III. Copyright Basics

A working understanding of basic copyright law is necessary before university users can make reasoned decisions regarding their proposed use of copyrighted material.

Copyright protection extends to original works of authorship, applies to any tangible medium of expression in which the Creator produces the work, and attaches whether or not a work is published or registered with the U.S. Copyright Office. This protection begins the moment the work is first fixed in a

tangible medium of expression. Facts and ideas contained in a copyrighted work cannot be protected by copyright but the "expression" of the facts or ideas can be.

The copyright notice <©, name, date> is not required for works published after March 1, 1989. Therefore, lack of notice does not mean the work is within the public domain.

Unpublished works are fully protected by copyright but will begin to enter the public domain beginning December 31, 2002, if the creator of the work has been deceased for at least 70 years on that date and the work has remained unpublished.

#### A. Rights of the Copyright Holder

The copyright holder possesses the following exclusive rights with respect to his/her work. The rights are divisible and include:

- (1) the right to reproduce the work,
- (2) the right to prepare derivative works based on it,
- (3) the right to distribute it (or copies of it),
- (4) the right to perform it publicly,
- (5) the right to display it publicly, and
- (6) the right to digitally transmit a sound recording.

“Copies” are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

Unless one or more of the statutory exemptions (discussed below) apply, permission must be obtained from the copyright holder before any of the above uses may be made of the copyrighted work.

#### B. Works Which May Be Freely Used

Copyright protection does not extend to the following categories of works and therefore copyright permission is not required.

Works in the public domain, which include:

- (a) works for which the copyright has expired;
- (b) works for which the copyright was lost;
- (c) works produced by a federal government employee produced within the scope of his/her employment;
- (d) works clearly and explicitly donated to the public domain;
- (e) works which lack sufficient originality to qualify for copyright such as standard calendars, standard ht./wt. charts, rulers etc.

C. Length of the Copyright Term

**WHEN WORKS PASS INTO THE PUBLIC DOMAIN**  
Includes material from new Term Extension Act, PL 105-298

Lolly Gasaway, UNC-CH

DATE OF WORK	PROTECTED FROM	TERM
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life + 70 <sup>1</sup> (or if work of corporate Creatorship, 95 years from publication, or 120 years from creation <sup>2</sup> , whichever is first)
Published before 1923	Now in public domain	None
Published from 1923-63	When published with notice <sup>3</sup>	28 years + could be renewed for 47 years + now additional 20 for a total of 67 years; if not so renewed, now in public domain
Published 1964-77	When published with notice	28 years for first term; now automatic extension of 47 years for second term, now 67 years
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years, or 12-31-2002, whichever is greater
Created before 1-1-78 but published between then and 12-21-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 or 12-31-2047, whichever is greater

<sup>1</sup> Term of joint works is measured by life of the longest-lived author.

<sup>2</sup> Works for hire, anonymous and pseudonymous works also have this term. 17 U.S.C. § 302(c).

<sup>3</sup> Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between 1-1-78 and 3-1-89, effective date of the Berne Convention Implementation Act, retained copyright only if, e.g., registration was made within five years. 17 U.S.C. § 405.

Notes courtesy of Professor Tom Field, Franklin Pierce Law Center

Last updated 10-9-99

## D. The Statutory Exemptions

There are primarily four sections of the Copyright Act which accrue to the benefit of nonprofit educational users in the university community. The first three sections discussed below contain rights users of copyrighted material. The fourth, the "good faith fair use defense," is a very important section for those employees of nonprofit educational institutions who have made a reasoned fair use analysis with respect to their proposed use.

### I. Section 107, The Fair Use Doctrine

The purpose of the fair use doctrine is to allow limited use of copyrighted material without requiring prior permission from the copyright holder. The statute lists four factors to be weighed when analyzing the proposed use in order to determine whether it is a fair one. Consideration of all factors is required although all factors do not have to be in favor of a use to make it a fair one.

A fair use analysis is necessarily a fact-driven one. Each unique set of facts regarding a proposed use leads to its own reasoned conclusion. Reasonable individuals may come to different conclusions concerning the same set of facts but the operative word is "reasonable." If an employee of a nonprofit educational institution has made a rational and reasonable fair use determination, he or she is not likely to be targeted for an infringement lawsuit because of the Section 504(c)(2), the good faith fair use defense. Under this section, a court must remit statutory damages to zero in any case where an infringer believed, and had reasonable grounds for believing, that his or her use of the copyrighted work was a fair use, if the infringer was an employee of a nonprofit educational institution, library, or archives acting within the scope of his or her employment.

Fair use applies in the digital environment and encompasses not only the right of reproduction but also the rights of performance, display, modification, and distribution.

A fair use analysis can be a difficult process. For the convenience of faculty, please see the accompanying Fair Use Worksheet which should only be used in conjunction with this Primer. Additionally, for reference and general guidance only, faculty may wish to read the Agreement On Guidelines For Classroom Copying In Not-For-Profit Educational Institutions With Respect To Books And Periodicals, HR 94-1476, which was incorporated into the legislative history, although not the actual text, of the 1976 Copyright Act. These guidelines only address copying print materials for classroom use.

The four fair use factors are as follows:

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

#### a. The First Fair Use Factor: Purpose and Character of the Use

This factor will generally weigh in favor of fair use if the proposed use is a nonprofit educational one as opposed to a commercial use. Most uses at the university can probably be characterized as nonprofit educational uses. But educational use alone does not automatically result in a finding of fair use just as a commercial use is not always an infringing one. A nonprofit educational use would likely result in this factor favoring a finding of fair use but remember that the other three factors must also be considered.

Additionally, with respect to the reproduction right, this factor is more likely to weigh in favor of fair use if the use is transformative rather than verbatim copying.

b. The Second Fair Use Factor: Nature of the Copyrighted Work

This factor will generally weigh in favor of fair use if the work to be used is factual in nature (scholarly, technical, scientific etc.) as opposed to works involving more creative expression, such as plays, poems, fictional works, photographs, paintings and such. Some works have no fair use rights attached, such as standardized tests and workbooks, work that are meant to be consumed.

The case for fair use becomes even stronger when there are only a few ways to express the ideas or facts contained in a factual work. The line between unprotected "facts and ideas", on the one hand, and protected "expression" on the other is often difficult to draw. If there is only one way or very few ways to express a fact or an idea, the expression is said to have merged into the fact/idea and there is no copyright protection for the expression.

As previously stated, unpublished works are currently fully protected by law. Nevertheless, fair use applies to them as well as to published works but the Creator's rights of first publication may restrict fair use.

c. The Third Fair Use Factor: Amount and Substantiality of the Portion Used in Relation to the Copyrighted Work As A Whole

Although there is not numerical or percentage limit, the larger the amount one uses, the less likely it will be a fair use. This deliberate flexibility in the statute allows each situation to be judged on its specific facts and allows the doctrine to be practical in the higher education setting.

This factor also takes into consideration the quality of the portion taken as well as the quantity. Sometimes, even if only a small amount is taken, this factor weighs against fair use if the portion is can be justly characterized as 'the heart of the matter'.

It is not difficult to see how this factor and the fourth factor, market effect, work in tandem. The more taken in amount and substantiality, the greater the negative impact on the market for the copyrighted work.

d. The Fourth Fair Use Factor: The Effect of the Use on the Market for or Value of the Copyrighted Work

This factor examines the effect of the use on the publisher's market. If the proposed use became widespread and would negatively impact the market for or value of the copyrighted work, this factor would weigh against fair use. This factor is often cited as the most important of the four although, again, the factors all interrelate and must be evaluated in conjunction with each other. In fact, this factor often becomes problematic because it can easily lead to circular reasoning. The purpose of the fair use analysis is to decide whether or not a permission fee is required—just because there is a permissions market should not solely dictate whether a fee is necessary in the first place.

II. Section 108: The Library Exemptions

Libraries exist to facilitate access to and preserve information and so are rightfully granted specific exemptions under copyright law. While libraries can always avail themselves of fair use under Section 107, their specific exemptions are grouped in Section 108 of the Copyright Act.

The § 108 exemptions deal primarily with the copyright holder's right to control reproduction of the work. Most, if not all, of the libraries within the UNC system qualify for the §108 exemptions because they are open to the public, make reproductions for patrons on a nonprofit basis and include notices of copyright with the reproduction. If the work contains a copyright notice, that notice must be included with the reproduction. If no notice can be found for the work, a statement indicating that the work may be protected by copyright is sufficient.

a. Library Reproduction of Unpublished Works

The library may reproduce an unpublished work in its collection for preservation or security purposes. It may also reproduce such a work for deposit in another qualifying library for research purposes.

b. Library Reproduction of Published Works

The library may reproduce a published work in its collection only to replace a work that is damaged, deteriorating, lost, stolen, or obsolete, and then only if it has determined after a reasonable effort that an unused replacement cannot be obtained at a fair price.

c. Library Reproduction for Patrons

The library may reproduce small portions of a copyrighted work or one article or contribution to a copyrighted collection for a patron if:

1. The reproduction becomes the property of the patron;
2. The library has no notice that the reproduction will be used for something other than private study, scholarship or research; and
3. The library has a display and order form which include the "Warning of Copyright" as prescribed by the Register of Copyright.

Warning of Copyright:

"The copyright Law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use", that user may be liable for copyright infringement. This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law."

The library may reproduce entire works or substantial parts of entire works for a patron if a reproduction of the work cannot be obtained at a fair price and if conditions 1 through 3 above are met.

Reproductions for patrons may be made in any medium available, including electronically.



d. Self Service Reproduction

The library is not liable for copyright infringement by patrons that may occur at the unsupervised self service reproducing machines as long as a notice is posted on the machine that the making of a reproduction may be subject to the copyright law.

e. Audiovisual News Programs

The library may make a limited number of reproductions of an audiovisual news program (local, regional and national network newscasts, interviews concerning current events and on-the-spot news coverage of news events) for retention by the patron or by the library for lending.

f. Systematic Reproduction

The single reproductions authorized by §108 are limited to “isolated and unrelated” reproduction and exclude copying where the library or its employee “is aware or has substantial reason to believe” that it is engaging in the related or concerted reproduction or distribution of multiple reproductions of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group. However, nothing prevents a library from participating in interlibrary arrangements that do not have, as their purpose or effect, the substitution for a subscription to or purchase of the work.

g. Exclusion of nonverbal works.

Reproducing musical, pictorial, or graphic works is not authorized under §108 except in these two circumstances:

- (i) Where a musical, pictorial, or graphic work is to be copied under conditions defined under preservation or replacement above;
- (ii) Where a pictorial or graphic work published as an illustration, diagram, or similar adjunct to a work is to be copied as a part of the larger work under conditions for reproducing portions or entire works above.

III. Section 110, The Classroom Exemptions for Performance and Display

Section 110 contains the exemptions for the performance and display of works, (not reproduction), essential to the functioning of a nonprofit educational institution.

a. Face-to-face classroom setting

Educators and students may perform or display a copyrighted work in the course of face-to-face teaching at a nonprofit educational institution in a classroom or other place normally devoted to instruction. There are no restrictions on the type or length of work, and the copyright holder’s permission is not necessary.

b. In the course of a transmission

If the work performed or displayed is to be transmitted by an educator or student, additional conditions must be met. Any work may be displayed but only nondramatic musical works and nondramatic literary works may be performed in their entirety. Nondramatic literary works do not include audiovisual works. Furthermore, even those works allowed above can only be transmitted if:

- (i) the performance or display is a regular part of the systematic instructional activities of a nonprofit educational institution; and
- (ii) the performance or display is directly related and of material assistance to the teaching content of the transmission; and
- (iii) the transmission is made primarily for
  - reception in classrooms or similar places normally devoted to instruction; or
  - reception by persons to whom the transmission is directed because special circumstances prevent their attendance in classrooms or similar places.

Even with these restrictions, however, small portions of works such as audiovisual works might be transmitted as a fair use. See Section E.

#### IV. Damages for Copyright Infringement

The copyright holder may sue for infringement of the work and seek the following remedies:

1. Temporary and permanent injunction against infringement;
2. Impoundment of infringing copies;
3. Destruction or other reasonable disposition of the infringing copies and any masters of negatives of infringing copies;
4. Actual damages to the owner;
5. Profits of the infringer attributable to the infringement;
6. Court costs and reasonable attorney's fees; and
7. Statutory damages.

In lieu of actual damages and profits a copyright holder may seek with respect to any one owner damages statutory damages ranging from \$30,000 to \$150,000 per infringement depending on the willfulness of the infringement.

## V. Process for Defense

Several North Carolina statutes working in tandem provide insurance coverage and defense costs for university employees. There are however several prerequisites to this coverage that must be borne in mind when asking whether a specific action or activity will be covered. First, the act (or omission) must be made within the scope of the employee's university duties. For example, if a faculty member is preparing a coursepack for his or her class and decides to use part of a copyrighted work in that packet, the action of selecting that work will probably be considered "within the course and scope" of his or her teaching duties. Second, the act or omission must not be fraudulent, malicious or corrupt. Third, the defense of the action must not create a conflict between the state and the employee. Such a situation might arise where the faculty member selects a copyrighted work for which the copyright is owned by the university. In these situations, often the state will employ outside counsel to represent the faculty member. And, fourth, the defense of the action must not place the state in the position of defending an act that would not be in its best interests. This fourth prerequisite is rarely raised and should not be problematic if the other three factors are not at issue.

A fifth factor underlies these four statutory predicates. The action must be taken in good faith. In summarizing what this means, it is often stated that the action was reasonable in light of the circumstances surrounding it and that it was in compliance with university policies. Thus, to take our first example above, if the faculty member selected an entire book to copy for his coursepack, knew that the book was copyrighted, did not check university policies (or related guidelines) on which uses might be considered fair use and did not seek permission to use the work from the copyright owner, the action probably would not be found to be in good faith.

Of course, few situations are this clear cut or obvious. On many occasions, particularly in the difficult area of copyright, it will not be certain that a particular use is "fair" or that some other exemption might apply. It is by far the better course in these situations to review all university policies and guidelines carefully and to seek advice from university counsel. The university will provide both defense costs (the expense of defending an action and paying a judgment) and representation (an attorney to represent the faculty member) if the faculty member takes the course described. The final decision in any case rests with the North Carolina Attorney General.

As to the amount of coverage available, the institution provides \$150,000 of self-insurance for any claim that meets these prerequisites. Beyond this amount the State of North Carolina has secured a "second tier" of protection, an "excess insurance policy" that currently will cover up to \$11,000,000 of coverage for such a claim (The policy is negotiated on an annual basis.). The monetary cushion is much more than adequate; indeed, we have never had a claim that came close to this limit.

Overall then, the liability and monetary coverage are excellent. As long as university employees recall their job parameters, comply with university policies and act reasonably and in good faith, they have little to fear from a copyright claim or litigation.

Appendix C- Fair Use Worksheet

FAIR USE WORKSHEET

Reprinted from UNC Intellectual Property Task Force Report, May 2000)

In determining whether people may use portions of copyrighted works in their teaching and scholarship, the law permits some uses for nonprofit educational purposes, including fair uses. The following worksheet is to guide faculty in making fair use determinations. A fair use analysis should be done each time a fair use of a work is contemplated. The fair use doctrine, as codified in §17 U.S.C. 107, sets forth four general factors to be considered when evaluating whether a proposed use of a copyrighted work is a fair use and thus, does not require permission from the copyright holder. The legislative history of this section and court decisions have provided further insight into the application of these factors to particular situations. The following areas should be carefully considered and balanced in making a reasonable, good faith fair use determination, whether for teaching, research, or other purposes. Reliance upon fair use should be limited to those cases that meet the fair use balancing test in favor of the intended use, and are carefully documented to support that conclusion.

This document should be read in conjunction with the Copyright Primer and any questions should be addressed to your legal counsel and/or campus copyright resource.

General Information

Name: \_\_\_\_\_  
Course, if applicable: \_\_\_\_\_ # of students: \_\_\_\_\_  
Semester: Fall \_\_\_\_\_ Spring \_\_\_\_\_ Summer \_\_\_\_\_ Year: \_\_\_\_\_  
Other Use: \_\_\_\_\_  
\_\_\_\_\_

Description of Material(s)

1. Author/Editor/Translator: \_\_\_\_\_  
Publisher: \_\_\_\_\_  
Book/Journal Title: \_\_\_\_\_  
Chapter/Article Title: \_\_\_\_\_
2. Author/Editor/Translator: \_\_\_\_\_  
Publisher: \_\_\_\_\_  
Book/Journal Title: \_\_\_\_\_  
Chapter/Article Title: \_\_\_\_\_
3. Author/Editor/Translator: \_\_\_\_\_  
Publisher: \_\_\_\_\_  
Book/Journal Title: \_\_\_\_\_  
Chapter/Article Title: \_\_\_\_\_
4. Author/Editor/Translator: \_\_\_\_\_  
Publisher: \_\_\_\_\_  
Book/Journal Title: \_\_\_\_\_

Chapter/Article Title: \_\_\_\_\_

5. Author/Editor/Translator: \_\_\_\_\_  
Publisher: \_\_\_\_\_  
Book/Journal Title: \_\_\_\_\_  
Chapter/Article Title: \_\_\_\_\_

Circle all the categories that apply below. Sign, date, and retain with appropriate accompanying materials for three years.

### The Four Factors

1. What is the purpose of the proposed use?

<ul style="list-style-type: none"><li><input type="checkbox"/> Nonprofit</li><li><input type="checkbox"/> Teaching</li><li><input type="checkbox"/> Scholarship/Research</li><li><input type="checkbox"/> Personal</li></ul>
--

<ul style="list-style-type: none"><li><input type="checkbox"/> Criticism</li><li><input type="checkbox"/> Commentary</li><li><input type="checkbox"/> Parody</li><li><input type="checkbox"/> Restricted Access</li><li><input type="checkbox"/> News Reporting</li><li><input type="checkbox"/> Otherwise “Transformative” Use</li></ul>
---

<ul style="list-style-type: none"><li><input type="checkbox"/> Commercial</li><li><input type="checkbox"/> Entertainment</li><li><input type="checkbox"/> Bad Faith Behavior</li><li><input type="checkbox"/> Profit</li><li><input type="checkbox"/> Lack Of Attribution</li></ul>
---

Uses on the left tend to tip the balance in favor of fair use. Uses on the right tend to tip the balance in favor of seeking permission from the copyright holder. The uses in the middle, if they apply, are favorable to fair use: they add weight to the tipping force of uses on the left.

Tally: Favors Fair Use: \_\_\_\_\_ Does Not Favor Fair Use: \_\_\_\_\_

2. What is the nature of the copyright work to be used?

<ul style="list-style-type: none"><li><input type="checkbox"/> Factual</li><li><input type="checkbox"/> Published</li></ul>
---

<ul style="list-style-type: none"><li><input type="checkbox"/> A Mixture Of Factual And Imaginative</li><li><input type="checkbox"/> Unpublished (Right Of 1<sup>st</sup> Publication)</li></ul>
--

<ul style="list-style-type: none"><li><input type="checkbox"/> Creative</li><li><input type="checkbox"/> Entertainment</li><li><input type="checkbox"/> Consumable Materials (Workbooks, Answer Sheets)</li></ul>
---

Again, uses on the left tend to tip the balance in favor of fair use while uses on the right favor seeking permission. In this case, uses in the middle have little effect on the balance.

Tally: Favors Fair Use: \_\_\_\_\_ Does Not Favor Fair Use: \_\_\_\_\_

3. How much of the copyrighted work will be used?

<ul style="list-style-type: none"><li><input type="checkbox"/> Small Amount</li><li><input type="checkbox"/> Amount Is Appropriate For A Favored Educational Use</li></ul>
--

<ul style="list-style-type: none"><li><input type="checkbox"/> Large Portion Or Whole Work</li><li><input type="checkbox"/> Portion Used Is Qualitatively Substantial</li></ul>
---

The amount of material should be measured both quantitatively and qualitatively. Quantity should be evaluated relative to the length of the entire work and the amount needed. The reproduction of an entire work weighs against fair use. A reproduction that is relatively small, but still uses the “heart” of the work will weigh against fair use.

Tally: Favors Fair Use: \_\_\_\_\_ Does Not Favor Fair Use: \_\_\_\_\_

4. What is the effect on the market or potential market for the copyrighted work?

Reproduction that substitutes for purchase of the original weighs heavily against fair use. This factor is closely linked to the other factors.

Tally Favors Fair Use\_\_\_\_\_ Does Not Favor Fair Use\_\_\_\_\_

y After An Evaluation Of First Three Factors, Proposed  
Use Is Tipping Towards Fair Use  
y User Owns Lawfully Acquired Copy  
y No Significant Effect On The Market Or Potential Market For  
The Work  
y No Similar Product Marketed By The Copyright Holder  
y Copyright Holder Unidentifiable

y Replaces Sale Of Copyrighted Work  
y Significantly Impairs Market Or Potential Market For  
The Work  
y Numerous Copies Made  
y Use Makes It Publicly Accessible On The Web

## PRIMER ON COPYRIGHT OWNERSHIP

Reprinted from UNC Intellectual Property Task Force Report, May 2000)

### I. Purpose and Scope

The intent of the copyright ownership primer is to elaborate on the copyright ownership policy and to provide examples to educate the reader about copyright ownership issues and aid the reader in applying the copyright ownership policies.

This primer is to be used in conjunction with the copyright ownership policy. The copyright ownership policy takes precedence over everything written below. Because this Primer cannot cover all situations, questions should be addressed to the delegated Institutional administrator.

### II. Overview

#### A. Intellectual Property

Intellectual property can be anything resulting from intellectual activity that is original or unique (e.g., literature, inventions, advertising designs, manufacturing processes, music and art). The term “intellectual property” normally is used to denote legal protection for the property. There are several legal tools used to protect the ownership of intellectual property and to prevent someone from using an author’s work or invention without permission or paying royalties. The two most common legal tools are copyrights and patents.

Universities have treated copyright and patent very differently. Traditionally, faculty have owned their copyrighted works while patents on faculty-developed inventions have been owned by the institution. The reasons for this are both historical and economic. Although some faculty earned significant income from book royalties, most faculty-generated copyrighted works have produced little or no income. Patented inventions, on the other hand, may produce significant income from licensing.

The adoption and use of technology to create copyrighted works and the potential for commercialization has caused universities across the country to examine the ownership issues as applied to copyrighted works. The Copyright Policy of the University of North Carolina is consistent with the traditional ownership equation for the huge majority of faculty-generated copyrighted works. It does provide for Institutional ownership under certain conditions and for directed and sponsored works. Even for these works, a different ownership model may be negotiated.

#### B. Copyright Ownership

Copyright law protects an author’s original works fixed in tangible media of expression. It protects the form of expression, but not ideas or facts, (e.g., the melody in it’s written form, the novel, the software, the course materials displayed on a webpage).

1. When an author puts his or her ideas into a tangible form it is automatically protected by federal copyright. Historically, the legal system and universities have permitted faculty to retain ownership over their copyrighted works including teaching materials (such as

presentations, lecture notes, syllabi and demonstration material) even though under the work for hire doctrine, the university may have been legally entitled to those works created while the author is employed at the university. Universities have not exercised this right, however, and both the institutions and faculty have regarded faculty copyright ownership as one of the benefits of employment in an educational institution.

2. In non-educational settings, if the work is made “in the course of employment” or created under contract (a directed effort), the employer owns the copyright unless a prior agreement has been made between the author and the employer.
3. The potential for the commercialization of distant learning courses, CD-ROMs, websites and software has focused attention on faculty members’ creations. The policy must insure that the rights of employees and students as well as those of the Institution are protected. The best interests of both the University and the faculty are best served by maintaining an environment that provides opportunities for joint faculty-Institutional commercialization of marketable works.

### C. Patent Ownership

A patent is a form of legal protection for inventions. A patent protects the embodiment of an idea; examples of ideas are machines, manufacturing processes, pharmaceuticals and compositions of matter. Traditionally, the Institution owns the patent right of the inventions of faculty members and the inventors earn a share of the royalties. Some works may be protected by both the copyright and the patent. For further information see the UNC GA Patent Policy.

## III. Copyright Ownership Issues

### A. Author Ownership

Even with the tradition of author ownership of copyrighted works, there are several important issues that the faculty and EPA employee should consider. Further, if Institutional ownership is mandated for certain categories of works, this does not exclude the possibility of the author retaining certain rights related to content and use.

1. Ownership of copyrighted works by the author means that all of the exclusive rights provided under the Copyright Act are held by the owner. Section 106 of the Copyright Act lists the exclusive rights of the copyright holder: reproduction, distribution, adaptation, performance, display, and for sound recordings, digital transmission. The copyright holder may exercise these rights or may transfer them or license others for one or more of the rights.
  - a. In order to publish the work or commercialize it, often the author has to transfer the copyright to a publisher or the commercialization company. Thus, faculty ownership may mean that the author owns the copyright only until it is published or commercialized. There are, however, publishers that leave some or all of the rights with the faculty author.
  - b. Often what faculty members want is the “right” to use the work in their classes, the ability to reuse the works and to change it, take it with them if they move and to commercialize it if the opportunity arises.



2. Control over the content of the work and control over how the work is used are very important to faculty. Faculty want to make sure that the integrity of the work is not compromised by someone else adding to it, altering it or not keeping it up-to-date. Typically, faculty want control over the work as part of a career path, possibly including writing a textbook based on the material, or teaching the course in another context.
3. Academic freedom means the right to teach and produce scholarly works according to the author's convictions. Some faculty are concerned that if the Institution owns a work, it could eliminate certain chapters or sections of a work to meet a marketing theme or to support a particular political position thus overriding the priorities of academic freedom and scholarly research.
4. Conflicts of interest can arise if faculty exercise their copyright ownership rights in ways that compromise their ability to meet their responsibilities to the Institution. Faculty should be cognizant of relevant policies on conflict of interest and commitment. For example, faculty who want to teach an online course outside the institution that would compete with an online course offered by the Institution, or which would preclude their teaching a particular traditional course for the Institution, would face potential conflicts.

## B. Institutional Ownership

There are also important reasons that the Institution may now be interested in copyright ownership, at least for certain types of works. The reasons include commercialization, return on investment, distribution of the work and technology transfer. It is the change in the technological environment and concerns about distance learning that have brought these issues to the forefront.

Clarity, open communication and clearly written agreements will help authors and Institutions to deal with copyright ownership in the digital age. Since most Institutions and faculty lack experience in dealing with intellectual property issues, it will take time and openness to resolve the above concerns. If the University is to own the copyright in a work, the author's interest will be best served if the issues raised with respect to author ownership are included in any contract specific to the work (e.g., ownership, control, academic freedom and royalties or other incentives).

## C. Joint Ownership or Shared Partnerships

In consideration of copyright ownership, it is important to remember that ownership need not be viewed as an all or nothing arrangement. Copyright consists of a set of rights that may be unbundled through creative sharing and licensing of specific rights.

Joint ownership/shared partnerships in a directed work between the author and the Institution or two Institutions may be negotiated. In this case, either owner can commercialize it and compensate the other. This should be put into a written agreement. (See V. SPECIAL CONSIDERATIONS below).

## D. Derivative Works

A derivative work is one that is based on or adapted from another work such as an arrangement of an existing musical work, preparing the motion picture script from the novel, translations, and the like. Student class notes are derivatives of a faculty member's class lecture. A diagram is a derivative of a tangible form or a process described by a speaker. The speaker or the lecturer owns the copyright to any

lectures or materials as long as they are original and are fixed in tangible form of expression (e.g., written out in long hand, recorded on a computer disc etc.). There are pending cases that will decide whether students' course notes can be commercialized and distributed or put on the Web. Until such time as the courts rule otherwise, it is UNC policy that faculty members own all notes and other works derived from their lectures.

#### IV. Application of the UNC Copyright Ownership Policy

##### A. Authorship

The first question to ask when determining copyright ownership of a work under the University of North Carolina Copyright Ownership Policy is who is the author, and what is his or her relationship with the University. The UNC Copyright Ownership Policy is organized by category of employment at UNC: (1) Faculty/ EPA Employee (Exempt Personnel Act (EPA) are usually salaried positions); (2) EPA / Non-Faculty Employee; (3) Students; and (4) Staff (State Personnel Act (SPA) positions are usually hourly wage positions).

##### B. Faculty and EPA Employees

1. Traditional Works owned by the Author. Traditional works are pedagogical, scholarly, literary or artistic works originated by a faculty / EPA employee resulting from non-directed effort (e.g., art works, audio recordings, films, lecture notes (fixed), manuscripts, musical scores, poems, scholarly works, tapes (audio or video), textbooks, distance learning materials, and videos not following into other categories).
2. Traditional Works owned by the Institution. Ownership of non-directed works involving exceptional use of institutional resources not routinely made available to faculty can be claimed by the institution. Examples of exceptional use of resources include:
  - a. Waiver of fees normally required to use specialized facilities such as equipment, production facilities, service laboratories, specialized computing resources, studios;
  - b. Institutional funding or gifts in support of the work's creation;
  - c. 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; and
  - d. Works where authorship cannot be attributed to one or a discrete number of authors but instead result from simultaneous or sequential contributions over time by multiple authors (e.g., laboratory manuals, tests, self-paced learning modules either printed or in digital format).

Resources not considered exceptional include ordinary or limited use of: desktop computers, FAX machines, laboratory space, libraries, office space, photocopiers, normal secretarial resources, telephones, and other informational resources.

3. Directed Works owned by the Institution. Works that are specifically funded or created at the direction of the Institution are owned by the institution. Examples can include any item listed in 1 above, but most often include distance learning materials / modules, lab manuals, databases, textbooks, software and videos.

- a. These directed works should be preceded by a clear agreement between the author and the Institution. The author, where practical, retains a Shop Right (i.e., the right to use the work within the institution without the payment of royalties).
- b. The author and the Institution may negotiate a different agreement to:
  1. Transfer the copyright ownership to the author; or
  2. Transfer the copyright ownership to the author with provisions for reimbursement or income sharing from the author to the Institution if the work produces income for the author; or
  3. Provide for joint ownership.
4. **Sponsored or Externally Contracted Works.** These include any copyrighted work that is developed with funds from a contract, grant or other arrangement between the Institution and third parties, including sponsored research agreements. These works are owned by the entity designated in the agreement /contract or grant guidelines. If not stated, it is owned by the author. Examples include: course materials, data, reports and software.

Sponsored works do not include traditional works created through independent academic efforts and based on the findings of the research project, unless the sponsored agreements state otherwise (e.g., books, journal articles, lectures).

#### C. Students (including Teaching, Research and Graduate Assistants)

Students may produce works while carrying out activities related to their enrollment at the institution or while under employment as a student research assistant, teaching assistant or graduate assistant. Papers, computer programs, theses, dissertations, artistic works, and musical works are potential examples of student works. Copyright in these works belongs to the student; however there are several exceptions described below based on the students employment status at the time the work was created.

1. **Sponsored or Externally Contracted Works.** Sponsored or externally contracted works include any copyrighted work developed with funds from a contract, grant or other arrangement between the Institution, the author and third parties, including sponsored research agreements. These works are owned by the entity designated in the agreement /contract or grant guidelines. If not stated, it is owned by the author. Examples include: reports, data and software.
2. **Works for Hire.** Works prepared by a student within the scope of his or her employment, or a work specifically ordered or commissioned by the Institution is a Work for Hire is owned by the Institution. These are the same as works by SPA staff and directed works created by faculty.
3. **Derivative Works.** Works that are based on or are derived from another work are owned by the original author. Classroom notes, drawings, diagrams taken by the student from lectures and handouts are derivative works and the copyright ownership belongs to the lecturer/author.

#### D. SPA Employees and Contracts to Complete Specific Work

Works prepared by a staff employee within the scope of his or her employment or a work specifically ordered or commissioned and considered by both parties to be a Work for Hire is owned by the Institution.

It is advisable in all cases of Work for Hire to have a written agreement signed by both parties, that acknowledges the work is owned by the Institution. Examples of such works might include compilations, contributions to a collective work (parts of an audiovisual work, parts of a book, parts of a display or advertisement, parts of a distance learning course, parts of a motion picture, parts of a web page), instructional text, drawings, maps or atlas, supplementary work, tests and / or answer material for the test and translations.

## V. Special Considerations

### A. Distance Learning / E - Learning

Providing college courses via electronic means has become a high profile copyright issue. On the positive side, in contrast to the traditional education form of lecture and lecture notes, today, it is possible to produce a course, reproduce it exactly and disseminate it worldwide. On the negative side, the digital process enables unauthorized duplication, alteration and dissemination. It is also possible for multiple authors to work together in creating and presenting the course online and to commercialize the product. Factors such as return on investment of university resources, technological teamwork and benefits of offering courses online must be considered in developing copyright ownership agreements that fit E-learning or distance education courses.

There are various approaches to copyright ownership of these works. Traditional works like textbooks are considered to belong to the author. However, because of the production costs, multiple authors and potential for revenue, universities may require different approaches to copyright ownership of distance education courses and related materials. Generally these policies are similar to those that apply to technology transfer in that the Institution assumes responsibility for the costs of commercialization in exchange for assuming joint or complete ownership. The faculty member typically receives a share of any proceeds in exchange for transfer of ownership rights.

1. Joint Ownership may be the most appealing approach to copyright ownership of distance learning products; however, since it complicates the management of the product, third parties interested in marketing the product may have no interest in it.
2. No Claim of Copyright technically may not place works in the public domain, but the author could decide not to exercise his or her rights or to distribute it free of charge. This approach may reduce the author's incentive to continue developing the work into a textbook or other form as the material will already be free to anyone. Because the material can be changed, altered or attributed to another author, it may also lose its integrity and reliability
3. Sharing of Profits may be appropriate in cases of Institutional contribution of extraordinary resources. If the Institution provides extraordinary or significant toward the development of an E-Learning product means that the Institution should share in the profits and have some control over how it is used and further developed.
4. Unbundling of Rights shifts the issue from ownership of the copyright to issues that are important in the use of the product. These can be worked out in individual agreements or on a case-by-case basis Institutions develop some experience in the use of these products.

Some issues are of concern to both author and the university, while others are unique to only one party:

- a. Both the author and the Institution may want to share in any revenues; to have the opportunity to make copies for institutional or personal use; to be kept informed of uses of the product and to control the use of the Institution's logo or the author's name on the product if the content is changed.
- b. An author may want the right to use portions of the work in other "derivative works" (e.g., journal articles, books, other distance learning courses; to revise the product and keep it up-to-date, create new versions and to take the product to a new employment situation.
- c. Both the author and the Institution may want the right to sell, license or assign rights to third parties; to use the materials in future classes and to combine the product with other course material and offer a new program.

## B. Patent vs. Copyright

There are several types of work for which both patent and copyright protection are available. Examples include software, sculptural works (jewelry and other artwork), designs, plant varieties and business and other algorithms. Both patent and the Semiconductor Chip Protection Act, which provides protection similar to copyright, can protect semiconductor circuits. Computer software is the primary example of this type of work for which dual protection may be available. Several issues need to be considered in determining whether to seek both forms of protection.

1. Software that is protected solely by copyright. There are some benefits to selecting copyright protection over patent for software. For example, it is far less costly to obtain a copyright than a patent. Copyright protection exists even without registering the copyright. If the author chooses to get a patent, then he or she transfers ownership to the university. Further, some campuses have a policy that requires the staff to disclose if they have a patentable product.
2. Software for which the Institution seeks a patent. (See Institution's Patent Policy). If patent protection is sought for the software, the Institution owns the work. Because of the cost of applying for, protecting and licensing a patent, Institutional ownership is generally to the faculty member's advantage. Typically, royalties are shared according to the institution's policies.

## VI. Written Agreements

Throughout the copyright policy and this primer, the reader has been encouraged and directed to put all agreements about copyright ownership into writing. Verbal agreements and "assumed" agreements have served business in the past. Today a different procedure is needed, Put It In Writing! The open discussion and agreement will enable all parties to have a clearer understanding of who owns the work. A sample Copyright Assignment Agreement related to software is attached to the end of this Primer.

## VII. Administration

The policy requires that each Institution designate an administrative unit (person or office) to implement the copyright policy. Issues that such units may address include:

Providing guidance on the ownership of specific works;  
Releasing institutional rights to an author;  
Accepting an assignment of rights to the institution from an author;  
Developing sample contracts or agreements;  
Offering guidance on ownership of already created works and those being contemplated;  
Participating in dispute resolution when there is conflict between the Copyright Ownership Policy and the campus Patent Policy; and  
Serving as liaison with the UNC General Administration Office on Intellectual Property.

#### VIII. Dispute Resolution

The policy requires that each Institution include a dispute resolution mechanism to resolve copyright ownership disputes that may arise between an author(s) and an Institutional official or office. The dispute resolution process should include a provision where the Institution or the author may:

- Request assistance in negotiating an agreement;
- Request a review of an ownership determination;
- Submit a dispute arising from the application / interpretation of the policy; and
- Coordinate the determination of what constitutes the exceptional use of university resources, with involvement of the author's department head.

Appendix E – Copyright Ownership Worksheet

SAMPLE COPYRIGHT OWNERSHIP WORKSHEET

(Reprinted from UNC Intellectual Property Task Force Report, May 2000)

Type of Copyrighted Work	PREPARED		BY:	Student	Author/ Creator	OWNED	BY:
	Faculty	Non-Faculty EPA	SPA / Work For Hire			Institution	Contract Determined
Traditional or Non-directed Works: Absent any written assignments between the author and the institution as sponsored works, works-made-for-hire, or directed works, of a nature that are pedagogical, scholarly, literary, or aesthetic (artistic) originated by a faculty/EPA employee resulting from non-directed effort, have historically been deemed in academic communities to be the property of the author. Works of this nature include but are not limited to text books, manuscripts, scholarly works, fixed lecture notes, distance learning materials (not falling into one of the other categories), works of art or design, musical scores, poems, films, videos, and audio recordings.	X	X			X		
Traditional Non-directed Works with Exception use of Institutional Resources: Use of institutional resources means institutional support of traditional works with resources of a degree or nature not routinely made available to faculty/EPA employees in a given area, including but not limited to: waiver of fees normally required for use of specialized facilities such as service laboratories, studios, equipment, production facilities, or specialized computing resources; Institutional funding or gifts in support of the creation of a work; or works where authorship can not be attributed to one or a discrete number of authors but instead results from simultaneous or sequential contributions over time by multiple authors, such as a lab manual.	X	X				X	
Directed Works: Examples of directed works include but are not limited to lab manuals, distance learning materials, or web pages that are specifically funded or created at the direction of the Institution.	X	X	X			X	
Sponsored or Externally contracted Works: Any type of copyrighted work developed using funds supplied under a contract,							

grant, or other arrangement between the institution and a third party. Works may include but are not limited to interim reports, final reports, and software. They do NOT include journal articles, lectures, books, and other works created through independent academic efforts. In the absence of specific language addressing ownership of copyrighted works, a work for hire made by an independent contractor shall be owned by the institution.							
Student Works: Works created by a student as a result of a degree program, even if directed by a faculty oversight committee.				X	X		
Non-directed works created by a teaching assistant or research assistant.				X	X		
Directed works created by students in the course of employment by Institution (Works for Hire).				X		X	
Classroom notes derived from lectures.				X	Retained by	the lecturer	/author
Software, Multimedia works, Distance Education Courses: created as a traditional, non-directed work	X	X			X		
Created using exceptional institutional resources	X	X				X	
Created using specific institutional direction	X	X	X			X	



## Appendix F Sample Coursework Agreement

### Agreement Between the Creator and the Academic Vice Chancellor (or Vice Chancellor for a Non-Academic Unit)

#### PURPOSE:

Creators who are producing web tools or course material should have a written agreement with their Academic Vice Chancellor (or responsible Vice Chancellor for a non-academic unit) involved in the funding and development of web tools and course materials that summarizes their mutual understandings regarding copyright ownership, license rights, distribution restrictions (if any), derivative works, income sharing (if any) and other relevant issues. This document attempts to raise some of the issues that should be considered, and to provide a menu of options that might serve as the basis of a written agreement. This agreement can be amended to reflect changes in the understandings of the parties, as needed.

Responsible Creator(s): \_\_\_\_\_

Identification of web tool or course material (title and brief description):

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Type of work:

- Web Tool
- Entire Academic Course or Certification Course
- Course Module (i.e., material to supplement an instructional program)
- Other \_\_\_\_\_

Who provided the impetus for creating the work?

- Initiative of faculty creator(s)
- Initiative of non-faculty creator (academic professional staff, student)
- Request of the Academic Vice Chancellor (or Vice Chancellor for a non-academic unit)
- Joint initiative
- Other? Specify:  
\_\_\_\_\_

What University resources will be used to create the course material?

- WSSU grant? Type
- Funding from other University sources? Identify:
- Funding from external sources (grants, contracts, and gifts)? Identify:
- Released time for responsible creator(s)? Specify:
- Summer salary for responsible creator(s)? Specify: \_\_\_\_\_
- Contributions by other University employees, who will provide technical assistance, programming support, graphics, etc., as "work for hire"?
- Use of University-provided hardware or software, beyond what is "usually and customarily provided" for the creator's use?
- Other? Identify: \_\_\_\_\_

If the material is a course (or course module), who has rights to the existing content?\*

- Responsible creator(s); i.e., material from the faculty member's syllabus, course notes, academic research program, etc.?
- Other University faculty/staff?
- University students (who are not student employees)?
- Commercial publishers (for textbooks, instructional software)?
- Other? Identify: \_\_\_\_\_

If the material is a web tool, is the web tool based on software that already exists in some form?

- No  Yes. If affirmative, who has rights to the existing web tool software?\*
- Responsible creator(s)?
- Other University faculty/staff?
- University students (who are not student employees)?
- Commercial publishers or software distributors?
- The Board of Trustees of Winston-Salem State University or Board of Governors of UNC?
- Other? Identify: \_\_\_\_\_

How widely should the course material be distributed by the University?

- Used by WSSU students for WSSU-administered programs of teaching, research and public service only (including WSSU distance education programs)
- Limited to unit of origin only
- Available to units that request it
- Licensed to other academic institutions, for use by their students that want to receive academic credit from that institution.
- Licensed, in whole or in part, to commercial publishers or other academic institutions (for distribution by disk, CD-ROM) or other on-line service providers, as supplementary materials (i.e., not for purposes of academic credit).

Proposal for distributing the "Creator's share " of net income: If the course material is commercially licensed by the University to third parties and generates royalty revenue, how should resulting net income be shared with the faculty creator(s) and others who have contributed (or will contribute) to the work (if applicable)? (Refer to the University copyright distribution of income\*\*)

\*It is the responsibility of the creator to identify any materials included in their work that are owned by third parties, and to secure written permissions or licenses from such third party owners, sufficient to cover WSSU's use (and greater rights if needed for distribution outside the University).

\*\*WSSU's policy for distribution of income from marketing University-owned copyrighted works is found in Article IV, Section 2 "Ownership" the copyright policy. The University and Department/Unit will normally share 50% each, respectively, of net income received from marketing University-owned copyrighted works with the creators. Other distributions may be justified in unusual circumstances or by written agreement with the Creators, subject to the approval by the vice chancellor.

**NOTE:**

The sharing agreement among creators may need to be revised over time to reflect changing contributions to the work by various creators. The proposed sharing arrangement will be reviewed and formalized by the Intellectual Property Committee before any distribution.

**OWNERSHIP AND LICENSE RIGHTS OPTIONS:**

The following options cover the most common situations. Check all options that apply. NOTE: Other options may be possible, i.e., in certain unusual circumstances, the University, through the Academic Vice Chancellor (or Vice Chancellor for a non-academic unit), may "commission" creation of a copyrightable work through a special written agreement with an employee, where the work would be over and above the employee's normal employment responsibilities. The campus technology transfer office and/or the Office of Legal Affairs can provide advice on other options.

\_\_\_\_\_ Copyright owned by creator(s); traditional work or non-directed work

The University confirms that it claims no right, title or interest, including copyright, in the course materials created as a traditional or non-directed work, except for an irrevocable, perpetual, royalty-free, non-exclusive license to use and distribute the original version of the course materials (i.e., the version of the software developed with University resources) in the University's internally administered programs of teaching, research and public service, including its distance education programs. Except for this non-exclusive license, the faculty Creator has an unrestricted right to use and reproduce the original course materials, to prepare derivative works therefrom, and to sell and distribute the course materials and derivative works as the faculty creator sees fit, without further obligation to the University (subject to the Policies on Conflicts of Interest) and external professional activity.

\_\_\_\_\_ Solely owned by University

The parties concur that the course materials will be (were) developed at the initiative of the Academic Vice Chancellor (or Vice Chancellor for a non-academic unit), and that the creator's participation in the project is an assigned University duty, that is, the work will be (was) prepared at the University's instance and expense and the University is (was) the motivating factor in the preparation of the work. Thus the course materials are a "work for hire" a directed work or a work created with "exceptional use of institutional resources" and the University has sole copyright ownership in the work. The creator either has no right to use or distribute the course materials outside the University's internally administered programs of teaching, research and public service, or to make derivative works, without the prior written permission of the University.

\_\_\_\_\_ Jointly owned by University and creator(s), by mutual agreement with creator(s)

The parties concur that the course materials will be (were) developed at the initiative of the Academic Vice Chancellor (or Vice Chancellor for a non-academic unit), and that the creator's participation in the project is an assigned University duty, that is, the work will be (was) prepared at the University's instance and expense and the University is (was) the motivating factor in the preparation of the work. Thus the course materials are a work created with exceptional use of institutional resources, a "work for hire" or "directed work" and the University has sole copyright ownership in the work. However, due to the significant contributions of the creator, the University agrees that the course materials should be jointly owned, and hereby assigns an undivided co-ownership interest in the course materials to the creator.

\_\_\_\_\_ Jointly owned by University and Creator(s), because of contributions by other University employees doing "work made for hire"

The creation of the course materials requires substantive contributions from other University employees doing "work made for hire" to support the development effort, and the University has an ownership interest in such employees' work, thus making the course materials jointly

owned by the University and the creator.

Additional considerations regarding distribution of jointly owned works:

\_\_\_\_\_ As joint owners of the copyright, either the University or the creator has the independent right to use and reproduce the original course materials, to prepare derivative works therefrom, and to sell and distribute the course materials and derivative works as the owner(s) see(s) fit, without further obligation to the other party, except for an obligation to account for or share profits resulting from such unilateral exploitation of the work (which may be waived by mutual agreement). (The creator is subject to the Policies on Conflicts of Interest and External Professional Activity.)

\_\_\_\_\_ Despite joint ownership, the creator agrees not to exercise his/her right to independently market the course materials outside the University, thus making the University the exclusive source for the Work.

#### DERIVATIVE WORKS:

Does the University have the right to make derivative works, based on the original Course material?

- Yes
- No

If yes, how should derivative works be handled, to meet the Unit's need to maintain continuity beyond the original creator?

- Creator has no objection to the Academic Vice Chancellor (or Vice Chancellor for a non-academic unit) directing other employees to make derivative works, with no further obligations to the creator
- Creator has no objection to the Academic Vice Chancellor (or Vice Chancellor for a non-academic unit) directing others to make derivative works, subject to the right of the creator to review and approve derivative works before dissemination
- Creator requests the first opportunity to make derivative works at the request of the Academic Vice Chancellor (or Vice Chancellor for a non-academic unit), on terms and conditions to be negotiated
- Other? Specify: \_\_\_\_\_

For course material (not web tools) owned by the University, or exclusively licensed to the

University, if the creator leaves the University and moves to another institution:

Can the Creator take the course with him/her, to the new institution?

Yes. If affirmative, any restrictions? \_\_\_\_\_

No

Can the Unit continue to offer the course, without the creator's participation?

Yes. If affirmative, any restrictions? \_\_\_\_\_

No

APPROPRIATE SIGNATURES:

\_\_\_\_\_  
Department Head

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dean (or equivalent)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Vice Chancellor for Academic Affairs

\_\_\_\_\_  
Date

\_\_\_\_\_  
Author/Creator

\_\_\_\_\_  
Date

Approved as to Form:

\_\_\_\_\_  
Office of legal Affairs

Date: \_\_\_\_\_

