



COPYRIGHT USE AND OWNERSHIP POLICY OF WINSTON-SALEM STATE UNIVERSITY

I. PREAMBLE.

Winston Salem State University (WSSU) is committed to complying with all applicable laws regarding copyright and patents. WSSU, 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. WSSU is further committed to providing educational activities for faculty, staff and students that are designed to explore the law of fair use, to provide guidance in the making of fair use determination and to create an understanding of copyright infringement law.

II. COPYRIGHT USE.

To the foregoing stated ends WSSU shall:

1. Inform and educate the WSSU community about fair use and copyright laws in general 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:
 - a. The character and purpose of the proposed use.
 - b. The nature of the work to be used.
 - c. The amount and substantiality of the portion to be used.
 - d. The effect on the market or potential market for the work.
2. Develop and make available resources concerning copyright laws in general, particularly copyright infringement issues and the application of fair use in specific situations.
3. Ensure that faculty, EPA and SPA staff, and students have access to assistance in making fair use determinations.

III. COPYRIGHT OWNERSHIP.

With respect to determining ownership of copyright, WSSU'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.

IV. COPYRIGHTABLE WORKS.

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

1. **Traditional Works or Non-Directed Works:** 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 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, or other works of the kind that have historically been deemed in academic communities to be the property of their creator.)

Ownership: Creator of the work, unless it is a work involving exceptional use of traditional resources, it is a directed work, sponsored work requiring WSSU ownership, or a work for hire described in a written agreement between the work's creator and WSSU. Under the Copyright Policy WSSU is deemed the "Author" of a work for hire.) If WSSU is to be involved in commercializing a traditional work or non-directed work, the work's creator shall assign the work to WSSU under an Assignment Agreement. The Assignment Agreement shall contain provisions outlining the commercialization responsibilities of WSSU and a mechanism for the sharing of commercial proceeds with the Author. In cases of ownership by the creator of a traditional work, WSSU, where practical, shall be granted a non-exclusive, non-transferable, royalty-free license for its educational or research use (hereinafter referred to as a "Shop Right").

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

"Exceptional use of institutional resources" means WSSU 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. Examples of exceptional use include but are not limited to: University connected grant funding, university funding, released time, extension of salary beyond contract period, use of university hardware and software beyond what is customarily provided, or use of university facilities beyond what is customarily used. University faculty or EPA employees may seek the guidance of the Intellectual Property Committee before initiating a copyrightable work whenever there is doubt as to customary use of university

resources in the academic area in which the faculty member or EPA employee is primarily assigned and/or out of which the copyrightable work will originate.

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

Ownership: WSSU. However, upon recommendation of the Intellectual Property Committee and with the approval by the Chancellor or the Chancellor's designee, WSSU may release or transfer its rights to the work's creator, with WSSU retaining (a) a Shop Right, and/or (b) the right to require reimbursement and/or income sharing from the creator to WSSU if the work produces income for the creator. The parties may also negotiate for joint ownership of such works, with the approval of the Chancellor or the Chancellor's designee. The general policy of the university shall be that, where the parties agree to income sharing, the university and the creator shall each receive a fifty percent (50%) share of the income derived. However, the Chancellor or the Chancellor's designee may negotiate another revenue sharing formula if it is believed to be in the best interest of the University.

3. Directed Works: "Directed works" include works that are specifically funded or created at the direction of WSSU (including, but not limited to, works for hire by faculty or other EPA employees).

Ownership: WSSU. The work's creator, where practical, shall be granted a Shop Right. WSSU may release or transfer its authorship rights to the work's creator under a written agreement negotiated between the creator and WSSU usually with retaining (a) a Shop Right, and/or (b) the right to require reimbursement and/or income sharing from the work's creator to WSSU if the work produces income for the creator. The parties may also negotiate for joint ownership of such works, with the approval of the Chancellor or the Chancellor's designee. The general policy of the university shall be that, where the parties agree to income sharing, the university and the creator shall each receive a fifty percent (50%) share of the income derived. However, the Chancellor or the Chancellor's designee may negotiate another revenue sharing formula if it is believed to be in the best interest of the University.

4. Sponsored or Externally Contracted Works:

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

Ownership:

1. WSSU is the owner where a sponsored or externally contracted work created under an agreement that expressly requires copyright ownership by WSSU. The creator of the work must disclose the work to WSSU. Provided there is no conflict with a sponsored agreement, WSSU may release or transfer its rights to the work's creator under an agreement negotiated between the creator and WSSU, usually with WSSU retaining (a) a Shop Right, and/or (b) the right to require reimbursement and/or income sharing from the work's creator to WSSU 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 Chancellor or the Chancellor's designee.
2. Where the sponsorship agreement requires a party to own the copyright, WSSU shall facilitate the transfer of the ownership rights. The creator of the work must disclose to WSSU the creation of the sponsor or the externally contracted work.
3. The creator of the work and WSSU shall jointly own the copyright where a sponsored or externally contracted work is created under an agreement that does not expressly require copyright ownership by WSSU or a third party. The creator is required to disclose to WSSU the creation of the sponsored or externally contracted work. In case of ownership in the creator, WSSU if practical shall be assigned a Shop Right.

B. Works by SPA Staff.

Most works by SPA staff members are considered to be "Works for Hire." A "work made for hire" is:

1. A work prepared by an employee within the scope of his or her employment;
or
2. 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.

Ownership: WSSU for Works for Hire made by SPA staff. In special cases, WSSU may enter into an agreement in advance that the SPA employee shall own

the copyright. In addition, the Chancellor or the Chancellor's designee may waive WSSU ownership.

C. Works by Independent Contractors.

Works by independent contractors are Works for Hire.

Ownership: WSSU. WSSU shall insure that there is a written contract for work by an independent contractor specifying WSSU ownership.

D. Works by Students.

"Student works" are papers, computer programs, theses, dissertations, artistic and musical works, and other creative works made by students. (For purposes of this Policy, the term "students" includes teaching, graduate, and research assistants.)

Ownership: Ownership of the copyright to these works belongs to the student unless the work falls within one of the exceptions described below:

1. **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.
2. **Works for Hire:** Student works created by students in the course of their employment with WSSU shall be considered to fall within the scope of Work for Hire in accordance with the section of this Policy on works for hire made by SPA staff.
3. **Classroom, laboratory, and other academic materials generated by students in the instructional process:** Subject to relevant sections of the Copyright Act, title to works such as classroom notes and handouts that are derivative of another work, taken from a lecturer's written or recorded notes and handouts shall remain with the lecturer/owner. Students have a limited right to use these materials for personal, educational purposes. Students may not use these materials for commercial gain.
4. **Special Cases:** Rights in student works may be transferred between the student and WSSU. In such cases, a written Assignment Agreement shall specify the respective rights and obligations of the parties. The parties may also negotiate for joint ownership of such works, with the approval of the Chancellor or the Chancellor's designee.

V. 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 WSSU elects to retain title to its patent rights, then the inventor/creator(s) shall assign copyright to WSSU and WSSU shall be compensated in accordance with the royalty provisions of the University of North Carolina's patent policy and procedures.

VI. ADMINISTRATION.

The Office of Academic Affairs is designated the administrative office, responsible for implementing this Policy. The Office of Academic Affairs shall address various matters covered by this Policy, including developing policies and procedures designed to supplement and interpret the ownership aspects of this Policy. The Chancellor or his designee shall make the final decision on all matters involving waiver, joint ownership assignment of rights and any other special exceptions to this Policy. All agreements that grant an interest in intellectual property are subject to the WSSU policy on Contract Review and Authority To Sign.

VII. INTELLECTUAL PROPERTY COMMITTEE.

The Chancellor of WSSU shall appoint bi-annually an Intellectual Property Committee.

The committee shall include one member from each of the following: the faculty senate, the staff senate, the graduate council, the division of advancement, sponsored programs, student government association, graduate student council, technology transfer, CIO (Chief Information Officer), and a faculty member from each school or college of the University. The Director of CITTLE (Center for Innovative Teaching, Technology, Learning and Evaluation) shall be a permanent member of the committee. For the initial committee, one half shall be appointed for a one-year term and the balance of members for a two-year term. Thereafter all members shall be appointed for two-year terms.

The committee may appoint panels of its members to make recommendations in the cases listed below. This committee shall be responsible for:

- A. Making recommendation to the Chancellor or his designee for resolving any disputes that may arise among an author, other creator of a work, a third-party sponsor of a work, and a WSSU official or office concerning copyright ownership or other rights.
- B. Providing advice regarding ownership of specific works.

- C. Providing for the educational activities of faculty, staff and students on copyright issues including fair use and ownership.
- D. Making recommendations to the chancellor or his designee concerning the existence or amount of exceptional University resources.
- E. Reviewing requests for income sharing agreements which deviate from the usual standards set in this policy and making recommendations to the Chancellor on such agreements.
- F. Reviewing requests for any deviation from this policy.

APPENDIX

- A. IP Organizational Chart

POLICY HISTORY:

Approved by Intellectual Property Committee (a subcommittee of Faculty Development Committee) on: 10/08/01

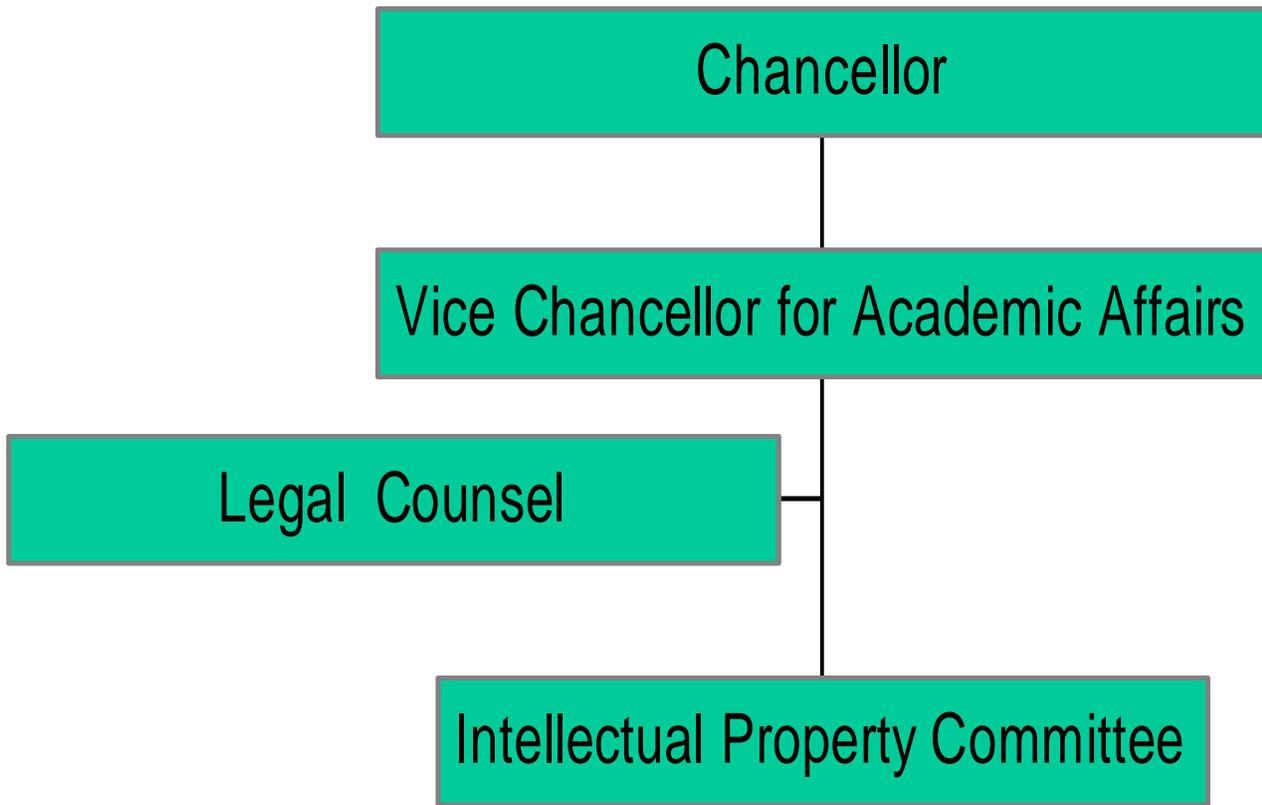
Reviewed by Faculty Senate

Reviewed by Distance Education Planning Committee

Reviewed by Staff Senate

Adopted by Board of Trustees on: September 21, 2002

APPENDIX A



NON-POLICY COPYRIGHT INFORMATION

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| A. Copyright Use Primer | URL |
| B. Fair Use Work Sheet | URL |
| C. Copyright Ownership Primer | URL |
| D. Sample Copyright Ownership Worksheet | URL |
| E. Sample Coursework Agreement | URL |