

Oklahoma State University Policy and Procedures

COPYRIGHTABLE INTELLECTUAL PROPERTY

**1-0201
GENERAL UNIVERSITY
November 2005**

The Board of Regents for the Oklahoma Agricultural and Mechanical Colleges hereby adopts the following intellectual property policy for Oklahoma State University, to include its main campus in Stillwater, the College of Osteopathic Medicine (COM) in Tulsa, and its branch campuses at Tulsa (OSU-Tulsa), Oklahoma City (OSU-OKC), and Okmulgee (OSU-Okmulgee), hereinafter collectively referred to as the University. This policy amends Policy 1-0201, approved July 1990.

INTRODUCTION AND GENERAL STATEMENT

1.01 The creation of scholarly products is central to the mission of the University. The majority of these products are copyrightable. The systematic dissemination and use of copyrightable products by the University is fundamental to the advancement of Oklahoma's culture and the development of its economy. The purpose of this document is to address the question of how the University community can hold the rights to such products in a way that best promotes quality scholarship while facilitating the creation and use of these products.

1.02 In keeping with traditional academic practice and policy, ownership of copyrights to works of artistry or scholarship in the creator's professional field such as textbooks, course materials scholarly papers and articles, software and other computer materials when they are works of artistry or scholarship, novels, poems, paintings, musical compositions or other such works of artistic imagination produced by University employees who have a general obligation to produce such works where the specific choice, content, course and direction of the effort is determined by the employee without direct assignment or supervision by the University shall reside in the creators and the works shall not be deemed "works made for hire" under this policy unless they are also sponsored/contracted works or specifically assigned by the University. The general obligation of faculty to produce scholarly works does not constitute specific assignment. This document preserves the basic principle that the Author/Creator of a copyrightable scholarly product holds the rights to such a product. The only exceptions to this principle are when the

work is created with the extraordinary use of University resources or is specifically assigned or commissioned by the University.. The intent of this document, then, is to educate the University community about issues regarding copyrights and Copyrightable Intellectual Property and to document University policies and procedures for such property.

1.03 The objectives of this policy are:

- A. To preserve traditional University practices and privileges with respect to publication of scholarly products;
- B. To enable the University to foster the free and creative expression and exchange of ideas and comment;
- C. To establish principles for the equitable distribution of any income derived from Copyrightable Intellectual Property owned by the University;
- D. To protect the rights and describe the responsibilities of University Personnel; and
- E. To protect the University's assets and imprimatur.

POLICY APPLICATION

2.01 This policy applies to all University Personnel.

- A. The provisions of this Policy are a part of and are incorporated by reference in any contractual relationship of the University with any University Personnel. These provisions shall be conditions of employment for all persons employed by the University, conditions of appointment for any person holding any appointment with the University, conditions of enrollment and attendance at the University by all students, and conditions of use of University facilities or resources, excluding libraries.
- B. University administrators and Department Heads are encouraged to take appropriate measures to inform all University Personnel of this Policy and its provisions

OWNERSHIP OF COPYRIGHTABLE INTELLECTUAL PROPERTY

3.01 The general policy of the University is that all rights in copyright shall remain

with the creator unless the work is an Institutional Work, a Commissioned Work, or a Sponsored Work. In keeping with tradition, the University does not claim ownership of Personal Works.

3.02 Ownership of copyrights to works produced by enrolled students without the use of University funds (other than Student Financial Aid), that are produced outside any University employment and are not Sponsored or Commissioned Works, shall reside with the student creator(s). Provided however, in all cases a student's graduate thesis or dissertation shall be deemed a student work under this policy but as a condition of enrollment and awarding a degree, the University reserves an irrevocable, non-exclusive, free-of-cost and world-wide right to reproduce in any media and distribute to the public, on a non-commercial basis, copies of said theses and dissertations, unless to do so would impair the ability of the creator to commercially or professionally exploit the Work. If a use of the Work by University is reasonably determined by the creator to impair the exercise of such rights, the University shall discontinue the impeding use but otherwise shall remain free to use the work as provided herein.

3.03 The University shall retain ownership of Works deemed to be Institutional Works. The University owns all rights, intellectual and financial, in such Works.

A. The University may, in its sole discretion, upon request and to the extent consistent with its legal rights and obligations, convey copyright to the creator(s) of such Works. This provision does not alter a University employee's responsibilities under the consulting or conflict-of-interest policies of the Board of Regents or of the University.

B. In the event of such conveyance of copyright rights to the Author/Creator, the University may, in accordance with a Letter of Agreement, be reimbursed for the cost of the Extraordinary University Resources used in creation and development of the Work.

C. No such reimbursement will be expected or sought for use of Ordinary University Resources.

3.04 Copyrightable Intellectual Property resulting from sponsored projects are deemed to be Sponsored Works, and are assigned to the University or to some other entity in accordance with the provisions of the sponsoring agreement. Royalty or other income received by the University for such Works shall normally be distributed in accordance with Section 4.07.

3.05 Under copyright law, Commissioned Works are owned by the commissioning party unless a written agreement exists that grants ownership to the University or another entity.

3.06 The University shall have the right to use its Institutional Works, its Commissioned Works, and its Sponsored Works on any of its campuses as well as outside of these campuses. The University's rights include the right to reproduce, distribute, perform, display, transmit, archive, and prepare Derivative Works from these Works.

3.07 Any Copyrightable Intellectual Property, regardless of whether it is an Institutional Work, Sponsored Work, Commissioned Work, or Personal Work, is eligible for consideration in Promotion and Tenure proceedings.

PROCEDURES

4.01 The procedures described in this section are meant to give guidance to the creation and/or development of Sponsored Works, Commissioned Works, and Institutional Works.

4.02 Should an Author/Creator request the use of Extraordinary University Resources in the creation and/or development of a Copyrightable Product, such requests may result in the creation of an Institutional Work; then the Author/Creator shall negotiate an agreement for the use of such resources. Such an agreement will culminate in a Letter of Agreement that will specify the appropriate reimbursement. However, University Personnel are cautioned to consult in advance with his/her Dean of the respective academic college or similarly situated administrative official regarding whether any University Resources to be utilized in the creation and/or development of a copyrightable scholarly product are to be considered Extraordinary University Resources.

4.03 A Letter of Agreement may contain, as appropriate, the following information:

A. A description of the planned product (e.g., "article about [subject] to be submitted for journal publication");

B. A list of the University resources to be involved in product creation and the value of such resources;

C. An explanation of whether University Resources to be used are Extraordinary University Resources or Ordinary University Resources;

D. A timeline that projects completion of the Product;

E. A statement of who will own copyright rights to the Scholarly Product;

F. An explanation of how any conflict of interest and/or conflict of commitment that this activity might cause between the Author/Creator and the University will be managed; and

G. The date on which the University's rights terminate for each Work that it owns. The University retains the right to use its Works until such termination date regardless of whether or not the Author/Creator remains in the employ of the University, except that such right shall not prejudice the professional standing of the Author/Creator.

4.04 Both the Author/Creator of the Product and his/her Dean of the respective academic college or similarly situated administrative official should sign the Letter of Agreement to indicate their accord with its terms.

4.05 University Personnel are encouraged to consult with the Office of Intellectual Property Management (OIPM) regarding issues of, market potential, contracting with publishers, and other issues pertinent to the creation and dissemination of Copyrightable Intellectual Property.

4.06 In the event of a disagreement about ownership of copyright in a Work, the case may be submitted to the University Intellectual Property Screening Committee for resolution according to the procedures that are described in OSU Policy 1-0202 and the principles that are expressed in this document.

4.07 Royalty or other income generated from licenses or other marketing arrangements concerning Institutional Works shall be paid directly to the University and shall, except where an agreement approved in accordance with the provisions of this Policy specifies otherwise, be distributed according to the following guidelines:

A. Unless otherwise agreed upon in a Letter of Agreement, the first \$10,000 of such funds shall be paid to the author/creator of the licensed work.

B. After disbursement of funds described in 4.07a has been completed, all direct costs incurred by the University in producing the copyrighted product shall be recaptured from royalties received by the University from the sale or license of the Copyrightable Intellectual Property.

C. After disbursement of funds described in 4.07a and 4.7b has been completed, the remainder of such income shall be distributed as follows:

- 50% to the Author/Creator •
- 30% to the University •
- 20% to the department or administrative unit of the •
Author/Creator

4.08 The University's share of income under section 4.07c of this Policy shall be allocated by the University to encourage the appropriate University entities that developed and/or implemented the Copyrightable Intellectual Property defined as Institutional Works. The intent is to provide funds beyond the direct costs incurred by these units to be used to support the infrastructure required for further development and implementation of Institutional Works.

Approved by the Board of Regents: September 13, 1974

Revised: July 1986

Revised: July 1990

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APPENDIX

Definitions of Terms

1. Assignment of rights – Assignment of rights is the transfer of the copyright or transfer of limited rights (e.g., right to make derivative works) from the creator (e.g., the writer of a literary work) to another entity (e.g., the University, a publisher). A transfer of ownership must be documented in writing in order to be valid.

2. Author/Creator – An author or creator is a person who produces a copyrightable product or other intellectual property and, unless the work is produced under a "work for hire" agreement, is the original owner of the work. Authors of a "joint work" are co-owners of that work. A contributor to a "collective work" retains copyright of the portion contributed unless otherwise assigned.

3. Computer software - Terminology employed in the description of computer software includes:

A. Documentation - Documentation shall include any material, other than a computer program or program description, created for aiding the

understanding or application of a computer program. Problem descriptions and user instructions are examples of documentation.

B. Database - A database is a collection of original data elements stored in a medium accessible by the computer.

4. Copyright - Copyright refers to the right to own and control the tangible expression of an idea.

5. Copyright notice – Copyright is automatically conferred on a Work when the expression of the idea being conveyed in the Work is fixed in a tangible medium; copyright law does not require any further action to secure the benefits of copyright. However, it is often wise to post a notice that a Work is copyright protected. For ideas expressed on a visually perceptible medium, a notice should contain three elements: (1) the symbol "©" or the word "copyright" or the abbreviation "copr", (2) the name of the copyright owner, and (3) the date of first publication of the work.

6. Computer program - A computer program is a set of instructions, capable when incorporated in a machine-readable medium, of causing a machine having information processing capabilities to indicate, perform, or achieve a particular function, task or result, verbalization, schematic, or other form of output. This output is sufficiently detailed so that it can be determined that the output was produced by a set of instructions constituting a corresponding computer program

7. Copyrightable Intellectual Property – an original, tangible expression of an idea. That is, the expression must be original; it must have been fashioned and produced by the creator of the Property. The author has copyright rights as soon as it is expressed in tangible form.

8. Department Head – the University administrative supervisor who has direct fiduciary responsibility for the activities of the Author/Creator.

9. Derivative work – A Derivative Work is an adaptation of the original copyrighted product. Since the basic concept of copyright requires that an idea's *expression* be original, any editing, translating, programming (into computer software), filming, or recording based on the original expression is a Derivative Work. Only the owner of the original expression may make or authorize Derivative Works. Anyone who makes an unauthorized Derivative Work may be liable if the Work is reproduced, distributed, or displayed to the public.

10. Duration of copyright – The term of the copyright for a product is the date of the death of the author plus 70 years.

11. Integrated Circuits - An "integrated circuit" is a system of electrical circuitry containing a large number of component parts of extremely small dimensions. When designed in accordance with a particular computer program so that it can perform a set or subset of functions or software, the protection of the integrated circuit indirectly amounts to the protection of the software. (It should be noted that patent protection might be available for integrated circuits.)

12. Institution/University – The terms "institution" and "University" refer to Oklahoma State University in this policy.

13. Letter of Agreement – A Letter of Agreement is a written codification of the agreements between Creator/Author and his/her Dean (or similarly situated administrative official) in cases of Institutional, Sponsored, and Commissioned Works. A Letter of Agreement may apply to each unique product to be created, or may be designed to apply to all subsequent instances of a particular kind of product (e.g. journal article submissions). It is the presumption of this policy that Letters of Agreement will not normally be executed in respect to Personal Works.

14. Non-copyrightable Work – According to the Library of Congress, several categories of material are generally not eligible for federal copyright protection. These include among others:

A. Ideas, systems, processes, procedures, concepts, or methods (may qualify for patent protection);

B Titles of works, names of products or services (may qualify for trademark protection),

C. Names of businesses, organizations, or groups (may qualify for trademark protection);

C. Catch works, slogans, short phrases, and familiar symbols for familiar designs;

E. Lists of ingredients, contents, or as a general rule, forms;

F. Works consisting entirely of information that is common property and containing no original authorship (for example: standard calendars, height and weight charts, tape measures and rulers, and lists or tables

taken from public documents or other common sources);

G. Information in the Public Domain – that which is not protected by common law or statutory copyright and therefore is available for copying without infringement (includes previously copyrighted works that have passed into public domain due to expiration of protection), and

H. Any work of the United States Government (but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise).

15. University Personnel – The phrase, "University Personnel" is defined as those persons holding any form of employment or appointment at the University, with or without compensation, any person who has student status, or any person or entity using or employing University facilities or resources, excluding libraries. This includes, without limitation, faculty, professional and non-professional staff, fellows and postdoctoral fellows, undergraduate and graduate students, persons with adjunct appointments, visiting professors, and/or any other person or entity using University facilities or resources, excluding libraries, under a contract with the University or with the assistance of or under the supervision of other University Personnel.

16. University Resources – University resources are those funds and other material resources that are administered by Oklahoma State University.

A. Ordinary University Resources – Ordinary University Resources are those University resources that are utilized in the normal course of University academic, research, service, and extension endeavors.

B. Extraordinary University Resources –University resources such as the use of institutional equipment, supplies, facilities, and employee time, are deemed to be extraordinary University resources when those University resources that are utilized go beyond the normal course of University academic, research, service, and extension endeavors.

17. Work(s) – The term "Work" refers to any tangible result of the effort of any University Personnel. It is, for purposes of this document, synonymous with the terms, "**Scholarly Product**", "**Product**", or "**Intellectual Property**".

A. Institutional Works – A Copyrightable Intellectual Property may be deemed to be an Institutional Work if a Work is created at the instigation of the University, under the specific direction of the University, for the University's use, by a person acting within the scope of his or her employment or subject to a written agreement. Such

a Work is synonymous with the traditional term "Works made for hire".

B. Commissioned Works - Commissioned Works are created by University personnel who are working under contract with an external entity to produce a specified copyrightable Product(s) for that entity.

C. Sponsored Works - When the University enters with a third party into an agreement, contract, or grant to perform research or other tasks, Copyrightable Intellectual Property may be created as an incidental by-product of the primary task. Such Property is defined as a Sponsored Work.

D. Personal Works - Personal Works are Copyrightable Intellectual Properties that are neither Institutional Works, nor Commissioned Works, nor Sponsored Works.