

Copyright Policy
Committee Report Draft
Section 1: Introduction

1.1 What is “Copyright”?

A copyright is a form of intellectual property protection provided by law for certain original works including written works, software, and selected audio, visual, or performed compositions. More detailed information on copyrights is available at <http://lcweb.loc.gov/copyright/>.

The copyright protects the particular form of expression rather than the subject matter or content of the work. One cannot copyright an idea, only the particular expression of the idea. Unlike patent protection, copyright protection exists from the time an original work is created, and vests immediately when the work is fixed in a “tangible medium” for the first time. Such tangible media might include paper, a computer disk, or granite.

Holding a copyright allows the owner certain exclusive prerogatives including the right to reproduce and distribute the protected material, the right to prepare “derivative works” based on the protected material, and (in the case of various artistic works) the right to display or perform the protected work. The owner of a copyright may convey to others all or some of the rights inherent in the copyright. For example, the owner of a copyright may “assign” all interest in the protected material to another. Alternatively, the owner of a copyright may grant a limited “permission” that allows another to use the protected material. In some cases, the owner of a copyright may grant a “license” to another that specifies the nature of any permitted uses of the copyright material.

1.2 The Importance of an Academic Copyright Policy:

Members of the University community—faculty, staff, and students—create each day large volumes of material that are subject to copyright protection. These various creations include such dissimilar works as scholarly monographs and journal articles, musical compositions, novels, textbooks, lectures, class outlines, poems, administrative software, dances, paintings, experimental software, promotional brochures, administrative correspondence, sculptures, multimedia teaching materials, videotapes, and policy documents. Many of these works have various functions and origins within the academic context. Some works arise directly from the pursuit of scholarly or creative activity and serve to convey the results of these activities; other works do not. Because copyright law and its policy-based application at the University will attribute both ownership rights and the associated rights to control subsequent uses of the protected works, an academic copyright policy must carefully balance a number of important objectives. These objectives must accommodate the various functions and origins of copyright works created at the institution.

1.3 The Objective of the University of Iowa Copyright Policy:

The objective of the University's Copyright Policy is to advance the mission of the University by:

- (1) Encouraging and supporting the exercise of academic freedom, innovation, and creativity;
- (2) Structuring the rights of ownership and the rights to use copyright materials created by members of the University community in a way that:
 - a. Enables the timely dissemination of materials resulting from the scholarship, teaching, research, and creative activities of faculty, staff, and students;
 - b. Permits the University to retain a copyright in and/or use materials created by members of the University community under certain circumstances;
 - c. Permits the University to meet contractual obligations to outside entities; and
 - d. Accommodates and is consistent with related University policies;
- (3) Assuring compliance with applicable laws and regulations in the management of copyright materials.

Section 2: The University of Iowa Copyright Policy

2.1: Summary of the Policy:

In order to meet the preceding various objectives, this policy allocates the ownership of copyrightable works created by faculty, staff, and students. Consistent with academic tradition and the expressed desire to encourage dissemination of the results of scholarship and research, the University agrees that in most cases, individual creators of copyrightable works of scholarship, research, or pedagogy, as well as creators of original works of art and literature, typically will hold personal copyright ownership of those works. The policy also specifies a limited body of works that will be owned by the University. In some cases "individual" ownership might be distributed over a group of joint authors or creators. In other cases, an individual or group of individuals might hold joint ownership with the University.

2.2: The Policy:

2.2.1 Individual Ownership of Copyrights: The University does not claim ownership of copyright in pedagogical, scholarly, artistic, or research works regardless of the mode of expression except when a work is described in section 2.2.2 below. Therefore, in those instances where the University does not claim ownership of a copyright, the copyright will be owned by those defined as authors or creators under copyright law unless there is a contrary contractual or statutory obligation. This disclaimer of University ownership interest in copyright materials applies to faculty and staff employees of the University, postdoctoral scholars, and to

students when the works are created in the course of their educational pursuits. However, for works created by a student solely in the course of the student's employment by the University, the University may claim ownership if section 2.2.2 applies. The University claims no ownership of copyright in any work created outside the scope of any employment within the University. By way of illustration, see Section 4, Cases #1 through #4.

2.2.2: *University Ownership of Copyrights*: The University has ownership, or the right to obtain ownership by assignment, of copyright in:

- (a) Any particular and identifiable work created pursuant to either an oral or written agreement between the creator and the University (see Section 4, Case #6);
- (b) Works created in the context of carrying out administrative duties for the University (see Section 4, Case #7);
- (c) Any work created by a team of faculty, staff, postdoctoral scholars, and/or students of such size or over such an extended period of time that determination of a discrete number of creators would be impossible, impractical, or potentially unfair (see Section 4, Case #8);
- (d) Any work created under the terms of a contract or other binding agreement with an entity, other than the University, when such contract or agreement requires University ownership of the work (see Section 4, Case #9);
- (e) Any work created with a significant use of University resources (see Section 4, Cases #10,#11,#12)]. For these purposes:
 - (i) The following, when customarily provided to authors or creators in their respective discipline and unit, shall not be considered significant use of University resources: salary, developmental assignment or award, library resources, computers, communications technologies, secretarial services, assigned offices and laboratories, and utilities.
 - (ii) Significant use of University resources may include: use of substantial funds received by the University through a contract or grant, use of funds allocated for distance learning programs, assistance of support staff outside of the creator's department or unit or, assistance of support staff from the creator's department when such assistance is greater than that normally provided others in the department. Significant use of University resources also may include use of shared research equipment or facilities including use of University media production facilities. The University may determine that it has an ownership interest in a particular copyright work developed with grant or contract funding when creation of the specific work in question was an identified objective of the grant or contract. Given this rationale, specific journal articles, monograph, or textbooks arising from grant or contract funding commonly would not be construed as identified objectives of the grant or contract but would be treated as academic benefits of having worked under grant or contract funding. In the event that creation of a copyrighted work, such as a textbook, is an identified objective of a grant or contract, the institution

will make a reasonable accommodation with the author consistent with established academic tradition.

(f) Any work created by professional and scientific staff members, merit staff members, or student employees whenever such work is the product of their assigned tasks or is a reasonably expected product of their employment. Works made by professional, scientific, and merit staff members generally are subject to institutional ownership because they are either “assigned tasks” or “reasonably expected outcomes” of employment. However, The University acknowledges that a limited number of professional staff members have certain prerogatives to set their own research, scholarly, pedagogical or creative tasks. Accordingly, the University is prepared to acknowledge personal ownership of works arising from these professional endeavors subject to other conditions of this policy. *See Section 4, Cases #5, #13 and #14.*

In any case where the University has the right to ownership under the provisions of this section 2.2.2, the University may require all persons who are employed by the University and who might otherwise have a potential claim to such work to execute a document as a condition of their employment in which they (a) state they have no rights to the work or (b) assign to the University those rights they may hold. Any University employee who makes an assignment of a work to the University can request and will be granted a non-exclusive royalty-free license to reproduce, adapt, perform, or display the assigned work for his or her own scholarly, research, or creative purposes.

Section 3: Administration of Policy

3.1 Copyright Advisory Group

The University of Iowa Intellectual Property Policy, of which this Copyright Policy is a component, shall be administered under the oversight of the Vice President for Research. The Vice President shall be advised on matters pertaining to the Copyright Policy by the Copyright Advisory Group, a subcommittee of the University of Iowa Intellectual Property Committee. The Intellectual Property Committee, the responsibilities and composition of which are set forth in Section 2 of the University’s overarching Intellectual Property Policy, shall be appointed by the Vice President for Research, who also shall designate those of its members who will comprise the Copyright Advisory Group. The Vice President for Research will consult with the Provost when designating members of the Copyright Advisory Group.

The role of the Copyright Advisory Group shall be to advise and make recommendations to the Vice President for Research regarding copyright matters, including, but not limited to, the following:

- (1) Resolution of disputes concerning the application and interpretation of the Copyright Policy;
- (2) Amendments to the Copyright Policy resulting from technological and legislative changes affecting copyright; and

- (3) Changes to administrative procedures involved in the implementation of the Copyright Policy.

In addition, the Copyright Advisory Group shall provide a forum to which faculty, staff, and students may refer questions and recommendations about the Copyright Policy.

The day-to-day administration of the Copyright Policy will be performed on behalf of the University by the University of Iowa Research Foundation, under the supervision of the Vice President for Research.

3.2 Disclosure

The creator of any work in which the University may have an ownership interest under section 2.2.2 of the Copyright Policy shall disclose the work promptly in writing to the University of Iowa Research Foundation using the disclosure form provided by the Office of the Vice President for Research. Such disclosure shall be made as soon as possible in the course of creating the work and shall be without prejudice to any ownership claim the creator(s) may have to the work. Upon receipt of a disclosure, the Foundation will provide a copy of the disclosure to the Vice President for Research and to the appropriate collegiate dean. The collegiate dean then in turn will provide the Foundation any available information relevant to the questions of copyright ownership, rights to any proceeds, and other issues deemed relevant to the situation. The final determination on these questions shall be the responsibility of the Vice President for Research, subject to the right of the creator(s) to appeal any such determination to the President of the University as provided in section 3.5 below. Upon final resolution of the issues raised by the disclosure, the creator(s) and the University, where appropriate, will execute such agreements as are necessary to document clearly the rights and responsibilities of the parties.

3.3 Distribution of Income

The UIRF shall receive all payments due under a license and shall distribute such earnings under the terms of this policy within 45 days from the end of the quarter in which the earnings were received. Prior to any distribution the UIRF shall recover any out-of-pocket expenses incurred in applying for the licensed copyright(s), maintaining the licensed copyright(s), or defending the licensed copyright(s). Also prior to any distribution under this policy the UIRF shall make any payments to others required by agreements, including but not limited to interinstitutional agreements for the management of jointly owned copyrights. Gross UIRF earnings, less its out-of-pocket expenses, less payments required to others, is designated as "Distributable Income." Distributable Income shall be allocated as follows:

The author shall receive the first \$50,000 in Distributable Income from a copyrighted work. In the event that the work is covered by more than one copyright or in the event that there is more than one University author, the \$50,000 shall be divided pro-rata first among the copyrights and then among the various authors.

Thereafter the following allocations will prevail:

- 1) The author(s) shall receive 30% of Distributable Income.
- 2) An institution-wide Research Enrichment Fund administered on a discretionary basis by the UI Vice President for Research shall receive 25% of Distributable Income.
- 3) The UIRF shall receive 25% of Distributable Income for its operating and legal expenses.
- 4) The home academic department(s) of the author(s) shall receive the following portion, it being understood that if more than one academic department is owed a share, the allocations shall be made pro-rata unless there is an agreement to the contrary:
 - 20% of cumulative distributable income less than \$2.5 million (i.e., up to a departmental share of \$500,000)
 - 10% of cumulative distributable income greater than \$2.5 million but less than \$5million
 - 5% of cumulative distributable income greater than \$5 million
- 5) The home college of the author(s) shall receive the following portions, it being understood that if more than one college is owed a share, the allocations shall be made pro-rata unless there is an agreement to the contrary:
 - 0% of cumulative distributable income less than \$2.5million
 - 10% of cumulative distributable income greater than \$2.5 million but less than \$5million
 - 15% of cumulative distributable income greater than \$5 million
- 6) Institution: In the event that distributable income exceeds \$5 million in any single year, the institution will have an opportunity to negotiate an institutional share of the earnings. Any such institutional share will be used to help ensure the long-term viability of the University's research mission.

3.4 Handling Copyright Works that may be Subject to Patent Protection

Certain works – particularly software – are subject to both copyright protection and patent protection. In the event that a work created at the University is subject to both copyright protection and patent protection, a finding under this policy that copyright to the work will be owned by the author or authors will not obviate the University's right to claim ownership in any associated patent or patents. The University's rights in patentable inventions are defined in the UI Patent Policy.

3.5 Appeal process

Any University faculty member, staff member, postdoctoral scholar, or student who believes he/she is adversely affected by any action or non-action of the Vice President for

Research or UIRF pursuant to the Copyright Policy may appeal such action or non-action. Where the action or non-action is based on the University's statutory or contractual obligations, or where the action or non-action has resulted in a contract or license, any such appeal may be presented in writing to the President of the University. In the case of any other basis for the action or non-action, the appeal may be made pursuant to the grievance process normally applicable to the individual's University status.

Section 4: Illustrations of Policy Application

The following examples illustrate how the policy would apply to specific situations and are accompanied by references to the governing policy sections:

- Case #1: Faculty A writes an article using a computer and supplies provided by the University. Copyright in the article belongs to Faculty A. Faculty A may choose to assign ownership of this copyright to a journal as part of a publication agreement without institutional involvement. [2.2.1]
- Case #2: Faculty B creates a painting using supplies and facilities of the University customarily provided to other faculty in the unit. Copyright in the painting belongs to Faculty B. [2.2.1]
- Case#3: Graduate Student C writes a dissertation while serving as a UI Research Assistant. The student owns the copyright in the dissertation since it is an academic requirement. [2.2.1]
- Case#4: Staff Member D, a nurse, writes a novel at home. Copyright in the novel is owned by D since the work was not created within the scope of UI employment. [2.2.1]
- Case#5: Staff Member E, a senior research associate, writes a journal article based on original research conceived by and conducted by E. E owns the copyright in the journal article since it is a scholarly work and is not a specified outcome of E's employment by the UI. [2.2.1 and also 2.2.2.f]
- Case#6: The Executive Officer of an academic department asks faculty colleague F to write a summary of the department's history for inclusion in the UI Catalogue. F agrees to do so. Copyright of the summary history belongs to the University since it is a specific work created as a consequence of an agreement between Faculty F and a colleague acting on behalf of the institution. [2.2.2.a]
- Case #7: Faculty G drafts a report for the University as part of an academic review of a department at the University. Copyright of the report belongs to the University since G created it while carrying out an administrative assignment from the University. [2.2.2.b]

Case #8: Beginning ten years ago, Faculty H worked collaboratively with faculty and staff colleagues to develop successive versions of software designed to control a research apparatus in H's laboratory. The various collaborators did not document their individual contributions to the software and memory of any specific individual contributions to the earlier work has faded. Copyright of the current version of the software belongs to the University since any assessment of individual copyright ownership of the current software would be impractical and could result in an unfair determination. The failure to document individual contributions would not, itself, generate institutional ownership but in this instance might have made recovery of forgotten facts easier. [2.2.2.c]

Case#9: Faculty J is Principal Investigator on an institutional contract with a private company. The contract is for the creation of software to manage power plants. The terms of the contract provide that the corporate sponsor will have an option to license the software created under the contract. While Faculty J may be the owner of the copyright in the software under copyright law, the J has the obligation to assign this ownership to the institution so that the University may meet the contractual requirement to offer the corporate sponsor an option to the work. [2.2.2.d]

Case #10: Faculty researcher K is Principal Investigator on a federal grant that provides significant funding to meet the proposed objective: development of a particular piece of medical imaging software. The terms of the federal award neither compel nor empower the University to take ownership of the copyright in the resultant software. Even so, the University has a policy-based opportunity to require K to assign copyright ownership in the software to the institution since use of the grant funds constitutes "significant use of University resources." In assessing its rights to request assignment of a copyright because of the use of grant funds, the University will consider requesting assignment only of copyrights to works specified as objectives of the grant-funded work. In this example, the University would not seek ownership of the copyright in other related works such as journal articles, monographs, or textbooks that may arise from the grant funding since these works are not commonly construed as identified objectives of the grant. To avoid any dispute, Faculty G should work with the Vice President for Research prior to distribution of any grant funds to lay the groundwork for the future resolution of any potential conflicting copyright claims.

Case #11: Faculty member L is Principal Investigator of a grant that provides Faculty member F with travel funds to visit a library in a foreign country so that F can do research. Later F produces an article based upon this research. Even though Faculty member F's efforts were supported by a grant, the copyright belongs to Faculty F. Even if preparation of a publication is a specified objective of a grant, the University will not seek assignment of the copyright in that work

Case #12: Faculty M begins to create a copyrightable web-

based work that will help high school students select a college. After three months, Faculty M realizes that the work cannot be completed without substantial use of University staff computer experts. M requests and receives permission to have access to this expertise. Faculty M would have been entitled to the copyright in work under this policy if there had been no infusion of substantial resources; however, because of the infusion of University resources, the University may have a claim. Faculty M should consult with the Vice President for Research at the time assistance is requested to lay the groundwork for the future resolution of any potential conflicting copyright claims. [2.2.2.e]

Case 13: N, a professional staff writer at the University, prepares original text for a brochure describing research in a college. Even though L prepared original text, the University owns the copyright in the brochure material since it is a reasonably expected product of N's employment. [2.2.2.f]

Case 14: Undergraduate student O is a work study designer in a University unit. In the course of this work O prepares a poster for an institutional lecture series. Even though O is a student, the University owns the copyright in the poster design since it was prepared as a consequence of O's employment by the institution and not as part of O's educational pursuits. [2.2.2.f]