



UNIVERSITY OF NORTH ALABAMA

Employee Policy Manual and Handbook

COPYRIGHT POLICY

Preamble

In the course of their activities at the University of North Alabama (“University”), employees and students are continually creating copyrightable works. As a matter of law, copyright will adhere upon creation of any original work of authorship that is reduced to tangible form, including literary works, computer software, data sets, musical works, dramatic works, pantomimes and choreographic works, artistic works (pictorial, graphic, and sculptural), audiovisual works including motion pictures, sound recordings, and architectural works. Ownership of copyright to material gives the owner the exclusive rights to reproduce the material, make derivative works based on it, distribute copies to the public, and perform or display the material publicly. Copyright law is primarily a matter of federal law, codified in Title 17 of the United States Code, 17 U.S.C. §§ 101 et. seq. (2006).

Under the copyright law, copyrightable works created by employees in the course of employment will be owned by their employers. However, traditionally, universities (including the University) have declined to assert ownership on behalf of the university in works of scholarship created by faculty in the course of traditional academic activities. Exceptions to this practice have always existed in order to locate within the university ownership of certain copyrightable materials in which the university, and/or its sponsors, public or private, also has a demonstrated interest.

As new technologies and media have emerged over the past decade, the processes for creation and distribution of copyrightable materials and the role of such materials in education and research have changed. One example is the area of instructional media where the University and its various constituents have been involved, together and separately, in the creation and distribution of online courses and other forms of instructional content. During this period, the copyright law has also developed. The University’s copyright policy, as set out herein, is intended to take these developments into account.

The copyright policy addresses, primarily, the distribution of rights in and to copyrightable materials between the University and its various constituents. It does not address the use by the University or such constituents of copyrightable materials owned by third parties. In the course of educational and research activities at the University, employees and students are likely to make use of materials owned by third parties. To a large extent, those uses may constitute “fair use” under the law, which provides that “use . . . for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright”, 17 U.S.C. § 107. Uses that are not “fair uses” may require permission to be granted by the copyright owner. The University is committed to the support of fair use principles.

In certain cases, copyrightable materials may be created in conjunction with inventions subject to the University patent policy. Unless otherwise determined by the University Provost in consultation with the Faculty/Staff Welfare Committee, in such situations, the University patent policy shall apply to the whole of such intellectual property.

Scope and Applicability

This copyright policy applies to the following categories of persons:

- Employees (full-time and part-time, including visiting faculty who have a University faculty appointment);
- Students (including visiting students);
- Non-employees who participate in research at the University or research carried out under the auspices of the University, such as visiting faculty and scholars who do not have a faculty appointment, fellows, and consultants.

This copyright policy will apply to employees and others who are on a paid leave from the University and create copyrightable materials during such leave, but shall not ordinarily apply to persons on an unpaid leave of absence or copyrightable materials created during such leave. The provisions of Section III (D) relating to the creation of copyrightable materials in the course of consulting activities shall apply to activities conducted by employees while on an unpaid leave.

It is not unusual for visitors from other institutions (home institutions) to participate in research and other activities at the University or under the University auspices. Such participation might involve joint creation of copyrightable materials. Such visitors are often subject to intellectual property policies of their home institutions. Consideration should be given to the intellectual property policies of the visitor's home institution in order to avoid potential conflicts between this Policy and the policies of the home institution. Obligations of each visitor under this Policy will be assessed and potential conflicts will be resolved through good faith negotiations between the University and the home institution, preferably prior to the start of the visitor's participation in such research or other activities. It is particularly important that such conflicts be resolved prior to the start of a visit when the research at the University is sponsored by a third party.

Copyright Ownership Principles

General Principle

The University will not claim copyright ownership of Traditional Works of Scholarship except as otherwise provided in this Article III, and persons covered by this Policy may claim copyright to such works under their name.

"Traditional Works of Scholarship" shall be defined to include: syllabi and other original materials created for use in a University course, books (including textbooks), other forms of textual material (whether in printed form or electronic media), software, works of art and other creative works including music, lyrics, photographs, poetry, choreography, architectural works, sculpture, pictorial and graphic works, motion pictures, and sound recordings, which in each case are created as part of the regular academic and scholarly activities of a person covered by this Policy.

Under applicable law, multiple creators who intend to create a joint work will be viewed as joint holders of copyright. Under this Policy, works created by more than one person involved in a common project shall be considered to be created by all such persons unless otherwise agreed in writing by each person.

Copyrightable materials which appear on Web pages will be considered to fall within the various categories described in this Policy, including Web pages which may be hosted by or on behalf of the University.

Standing Exceptions

The University will retain ownership of copyrightable materials, or reserve a license to such materials, in the situations listed below. In each case, the situations listed below will apply whether such materials are in print or electronic form or other media, now in existence or hereafter arising. In each situation where the University retains ownership (i) the creator(s) of such materials shall retain a non-exclusive, world-wide, royalty-free, non-assignable license to use such materials for their personal non-profit educational and research purposes and (ii) the University may determine to make such materials available on an open-source or open-access basis or otherwise take action to make such materials widely-available as contemplated by Section VII.

- The University retains a non-exclusive, world-wide, royalty-free license to any material, regardless of type or creator, to the extent such material is used in the title or description of a University course, in the syllabus of a University course or created for distribution or actually distributed to students in a University course, for all educational and research purposes.
- The University retains a non-exclusive, world-wide, royalty-free license to any material created for a University publication; to the extent such material is not otherwise owned by the University under this Section III.
- The University retains ownership of any material which was created making Substantial Use of University Resources, as defined below in Section D.
- The University retains ownership of any material created by a non-faculty employee in the course of employment, but the University will not own Traditional Works of Scholarship reporting on the work which led to the creation of such materials unless required under Section III(B)(7).
- The University retains ownership of any material created in the course of research or other collaborative projects conducted under the University institutional auspices (including school or department auspices) where the identity of the project resides with the University (e.g. resulting in a publication of a school or department, curricular efforts).
- The University retains ownership of any material created in the course of a research or other collaborative project where development has been by a team such that the identity of the project resides with the University rather than with particular individuals.
- The University retains ownership of any material created as the result of a research project, except Traditional Works of Scholarship reporting on such results, sponsored by a governmental, corporate, non-profit or other sponsor where the contract or agreement with such sponsor imposes obligations on the University with respect to such copyrightable materials. With respect to Traditional Works of Scholarship reporting on the results of such a research project, the University shall retain only those rights, if any, which are necessary for the University to meet its express obligations under the contract or agreement with the relevant sponsor.
- The University retains ownership of any material created at the direction of, or commissioned by, the University.
- The University retains ownership of any material which is closely associated with a patent owned by the University under the University's patent policy. This exception will typically apply to any copyrightable material created to effectuate an invention (e.g. software) or supplement an invention (e.g. documentation), but will not apply to Traditional Works of Scholarship reporting on the research which led to the creation of such materials unless required under Section III(B)(7).

- The University retains ownership of any material, in any form or media (including without limitation video or audio) which is a reproduction of a University course or program. The University will not claim ownership of the intellectual content within such reproduction. Any commercialization by the University of any such material shall be in accordance with Sections III(C) (2) and V.

Instructional Media

This Section highlights the applicability of this copyright policy to instructional media. Instructional media are produced in a variety of forms including electronic and print publications. Instructional media includes teaching activities or interactive components that involve creators with the users of the instructional media. The presence of teaching and similar activities distinguishes this form of media from certain traditional works such as printed textbooks.

Restrictions on certain outside uses of instructional media are intended to involve the University Provost in consultation with the Faculty/Staff Welfare Committee in determining appropriate uses of Instructional Media and to further effectuate the University's policies regarding conflict of interest, conflict of commitment and appropriate use of the University name.

Instructional media, within this Policy, are intended to encompass (i) the content of courses and programs delivered using any form of media including print, in-person delivery, over the World Wide Web or using other forms of electronic media, videotaping, audio taping, television broadcast, or radio broadcast, as well as forms of media which may arise in the future, and (ii) if applicable, the technology used to structure and deliver such course and program content. Instructional media, within this Policy, would not extend to cover a traditional textbook, whether in printed or electronic form, without the presence of further instructional involvement of the creator.

Instructional Media Owned by the Creator

Instructional media created by an employee as part of activities which do not otherwise fall within any exception contained in Section III(B) or (C), will be owned by the employee creator, subject, in certain cases to a retained interest of the University. Employees may use or license instructional media owned by them under this Section 1 for all purposes including commercial purposes. Any use must be approved under the University's conflict of interest and conflict of commitment policies and shall not make use of the University name other than for purposes of identification.

The license to instructional media reserved by the University under Section B(1) may be used by the University, without restriction, for educational and research purposes including licensing third parties for such purposes.

Instructional Media Owned by the University

Certain instructional media will, pursuant to Section III (B) and (C) be owned by the University. As a general matter, instructional media owned by the University and created with employee involvement may be used by the University outside of the University for educational and research purposes and for commercial purposes. In all uses outside of the University, the University will consult with the primary employee creators as to the planned use of such materials prior to granting rights to third parties.

Substantial Use of University Resources

The Substantial Use of University Resources in the creation of copyrightable material will give the University an interest in such material and support ownership by the University as contemplated by Section III(B)(3). The precise determination of what usage of the University resources or assistance of non-employee or student personnel shall be considered substantial, or of when the identity of a project resides with the University rather than with particular individuals, involves the exercise of judgment based on the circumstances and on practices

within higher education. As basic principles, use of the University resources or assistance from non-employee or student personnel that is incidental and not essential to the creation of the materials does not constitute substantial use of resources, while use of the University name or consultants engaged by the University for purposes of creating the materials would constitute substantial use of resources. For example, none of the following shall be considered substantial use of the University resources:

- Use of resources or non-employee or student personnel commonly available to an employee in the same school, institute or department, such as libraries, offices, desktop computers, secretarial staff or specialized course management programs that are widely available to employees;
- Occasional use of a specialized piece of equipment or facility for routine tasks;
- Receipt of salary; and
- The use of resources or facilities generally available to students as part of their educational activities.

Student Works

General Principle

Subject to the terms of this Section IV, students own the copyright to original works created in the course of their academic activities at the University, including class work, research materials, works of art or music and theses ("Student Work"). Student Work created jointly by more than one student will be owned jointly by such students.

Standing Exceptions

Each of the provisions of Section III (B) shall apply to Student Work (as though set forth in full in this Section) to allocate certain rights or copyright ownership of Student Work to the University.

Limited License

In addition to the provisions of Section III(B), the University retains a non-exclusive world-wide royalty-free license to Student Work for so long as the student creator is matriculated at the University to use such Student Work for the University's educational and research purposes including publicizing the University or any program or department of the University. This limited license shall terminate when the student graduates from the University or ceases to be matriculated.

Participation in Employee Research

Where a student(s) participates in the work or research of an employee, and such student participation does not constitute Substantial Use of the University Resources on the part of the employee, the student and employee may agree prior to the commencement of such work or research to allocate the copyright arising with respect to such work or research between the student and employee, as they may agree. No such agreement shall operate to transfer copyright to all or any portion of a student's thesis or dissertation to an employee, or otherwise transfer ownership to an employee of work produced by a student in the course of the employee's teaching or academic advising activities involving employees.

Participation by Students in the Creation of Software

In situations where an employee has initiated and is leading his or her own personal research project involving the creation of software code, and one or more students are involved in such research project to the limited extent of making discrete contributions to the research (and the involvement of students does not rise to the level of a joint research project between such employee and the student), then, absent written agreement between the employee and the student or the applicability of any of the Standing Exceptions in Section III(B), the following terms shall apply: (1) there shall be no presumption of joint copyright ownership by employee and student, (2) employees and students shall own the copyright to the portions of the research which constitute their original work and shall be free to license or otherwise use

such work, (3) the employee(s) shall hold a non-exclusive royalty-free license to use the work of the student in such research for all purposes determined by the employee, consistent with this Policy and other policies of the University, (4) the student shall not hold any license or other right to use any portion of the research other than the original work created by the student and (5) the employee shall determine, consistent with higher education principles, whether and how to credit student contributions to the research project.

Commercialization of Copyrights

When the University asserts copyright ownership in material (i) the creator or (ii) in the case of instructional media, the employee (s) represented within such media, has the right to share in any net proceeds derived from commercializing that material.

Unless otherwise agreed to in writing by the University and the creator(s), specifically, net proceeds (see below) shall ordinarily be distributed as follows:

- 50 percent to the University; and
- 50 percent to the creator.

Net proceeds are gross proceeds minus all out-of-pocket expenses incurred by the University that are associated with the particular material. Out-of-pocket expenses may include legal expenses associated with securing the copyright, negotiating an agreement, travel expenses, payments due to other parties with rights in the work, or any reasonable expenses incurred in pursuing the commercialization of the material.

Equity – Equity received from a company or other entity in lieu of license fees or royalties shall be allocated by calculating and distributing the appropriate number of shares or ownership interests, using the same percentages outlined above, irrespective of their value. In the event that there is a single share or a partial share or interest, which cannot be distributed to the creator(s), that share or interest or partial share or interest shall belong to the University. Unless otherwise required by contractual arrangements or applicable law, the University shall distribute shares, interests or equity at the time they are received by the University or will require that the creator receive such equity directly from the company or other entity. In the event that the University is required to hold the shares or interests for any length of time or is otherwise restricted from distributing shares or interests to creators, the University shall hold such shares or other interests but shall not be responsible for any fluctuation in the value of the shares or interests or any matters relating to the administration of such shares or interests.

If more than one creator is to share in the creator share, the creators shall decide among themselves their respective shares and shall provide the Provost with a written agreement signed by all creators. Such written agreement shall be provided within three months of a written request from the Provost for such an agreement and shall be irrevocable unless it is modified in writing by all creators. In the absence of such a written agreement, the University shall determine the distribution of shares to creators.

Whenever the University licenses rights to copyrightable material, it will reserve the right for the University to use the material for internal research and educational purposes and will generally seek to reserve such rights for other non-profit research institutions.

Transfer of Copyrightable Materials Owned by the University to the Creator

If the University determines that it will not pursue commercialization of copyrightable material subject to University ownership under this copyright policy, the University may, in its discretion, consider a written request by the creator to transfer ownership in the material to the creator, subject to the terms of any applicable agreements with third parties under which the material was created. Transfer of ownership to

the creator will be subject to an irrevocable royalty-free license to the University to use the material for education, research and other non-commercial purposes and reservation to the University of the right to grant similar licenses to other nonprofit institutions. In those instances in which there are multiple creators, all creators must be in agreement and be party to such a request.

Open Source Code and Other Open Access Licensing of Copyrightable Materials

In accordance with the University's mission of conducting education and research, an owner of copyrightable material may desire to make copyrightable materials widely available to the public via open source licensing of software or publication of materials via open-access licenses. In each case, the decision to make materials widely available should include a number of considerations including, without limitation: who owns the material under this copyright policy, whether the same interests would be better served by commercialization of such materials and whether open access should be limited to nonprofit and educational purposes.

Open access licensing may also be covered by separate policies and procedures of the University in effect from time to time. Such policies and practices may cover issues such as permitted use of the University resources (including computer resources and bandwidth) and require consultation with the University Provost and Faculty/Staff Welfare Committee and University Legal Counsel to determine the implications of open-access licensing using the University resources.

As a general matter, an individual who owns copyrightable material (and the University does not retain an interest in such material) under Section III, may freely engage in open access licensing which does not use the University resources.

In the event that the University either owns copyrightable material under Section III or retains an interest in such material, open access licensing may be conducted only following disclosure to the University under Section VIII (B). Following disclosure and a request that such material be made available on an open-access basis, the University shall make a determination as to such request weighing the factors outlined in Section (A) and taking into consideration the views of the relevant employee, appropriate supervisor, and the University Provost in consultation with the Faculty/Staff Welfare Committee.

Administration of Policy

University Administration

This copyright policy will be administered by the University Provost in consultation with the Faculty/Staff Welfare Committee, subject to the oversight of the Executive Council, and in consultation with the appropriate supervisor of the University. The Provost may delegate his/her duties under this Policy to such other officers or employees of the University as he/she may find appropriate.

Disclosure of Copyrightable Materials

It is the responsibility of the creator or group of creators of copyrightable material to promptly notify and fully disclose to the University any work in which the University may claim ownership rights or an interest under this Policy, including any work which made Substantial Use of the University Resources. If a creator or group is uncertain whether the University has ownership rights or other interests in certain material, that information shall be disclosed to the University.

Agreement to Policy

This Policy constitutes an understanding that it is binding on the University and on all individuals who accept University employment, who use the University resources or facilities, or who participate in University research. All individuals employed by or affiliated with the University shall be advised of the

University's policies and procedures relating to intellectual property through publication in the employee handbook on the University's website. The University may require formal copyright agreements to implement this Policy as appropriate, but the absence of such executed agreements shall not invalidate the applicability of the Policy. Nothing in this Policy shall constitute a waiver by the University of any rights that the University may have under any other University policy, including without limitation, the patent policy, or any applicable law.

Disputes

Disputes involving intellectual property rights or this Policy shall be reviewed and resolved by the University Provost or such other officers or employees as he/she designates. Decisions made by designees may be appealed to the University Provost, who will review the matter and reach a decision in consultation with the Faculty/Staff Welfare Committee, the relevant supervisor, and others determined by the University Provost. University parties involved in a dispute are also entitled to seek redress under the Grievance Procedures available to all employees as outlined in the employee handbook. Dispute resolutions by the University Provost may be appealed to the President, who will review the matter and make the final decision.

Administration by Colleges

The appropriate supervisor of the University shall work closely with the University Provost and the Faculty/Staff Welfare Committee to ensure that the perspectives, practices and values of each unit are taken into consideration in the decision-making process under this copyright policy. In addition, the relevant administrator shall be involved with any decision to (a) grant open access to copyrightable material in which the University retains ownership or an interest under Section VII (D) and (b) commercialize instructional media which is a reproduction of a University course or program. Each unit of the University retains the right to supplement this Policy as necessary or desired by that unit, including requiring formal copyright agreements of their employees. Any supplement shall be consistent with the terms of this Policy, in writing, approved by the appropriate supervisor and submitted to the University Provost for review and approval.

Approved by the Board of Trustees, 12/13/2010