

III.D. POLICY RELATING TO COPYRIGHTS AND COMMITMENT OF EFFORT FOR FACULTY

(Source: 1977 Research Investigator's Handbook; revised, 1978; revised, Resolution of the Trustees, February 16, 2001 and Offices of the Provost and Faculty Senate, Almanac, February 27, 2001 (<https://almanac.upenn.edu/archive/v47/n24/ORcopyright.html>); revised, Office of the Provost, November 21, 2022)

1. Policy Statement on Copyrights

The Trustees of the University of Pennsylvania, subject to the exceptions declared in Sections 1.A., 1.B. and 1.C. affirm the academic custom that creators of intellectual property own the copyright to works resulting from their research, teaching and writing and have the individual right to apply for, own all right, title and interest to enforce, profit by and transfer to other parties, such as publishers, copyrights in their works under the laws of the United States and other jurisdictions. Computer software and courseware (the tools and technologies used to present courses), to the extent not protected by patent law, are governed by this policy. With respect to works such as journal articles and other similar publications, when an author transfers an interest in these copyrightable works, the author should use reasonable efforts to secure for the University the right to reproduce such works, royalty free, for all traditional, customary or reasonable academic uses. With respect to computer software and courseware, the University shall enjoy a permanent, non-exclusive, royalty free license to make all traditional, customary or reasonable academic uses of these works.

A. Sponsored Research. Exceptions to this custom may arise when works are made under government-sponsored research, industry-sponsored research, and certain grants in which the University assumes specific obligations with respect to a copyrightable work resulting from a given sponsored program. To the extent necessary, where the sponsored program agreement provides that the sponsor will acquire rights to copyrightable works produced under the program, the University will own all right, title and interest to the copyrightable works created under such sponsored programs.

A.1 In accordance with such obligations, the University will use reasonable efforts to secure an acknowledgment from the authors of the copyrightable work prior to the commencement of the sponsored program. Authors who are also principal investigators and have responsibility for other authors will use reasonable efforts to secure acknowledgment from said authors prior to the commencement of the sponsored program.

A.2 The University shall negotiate a license with the sponsor in accordance with applicable provisions of the sponsored research agreement. Net revenues realized from said sponsored research agreements will be distributed in accordance with the procedures for the distribution of patent royalties described in Section 2.3 of the Patent and Tangible Research Property Policies and Procedures, except that the 30 percent research foundation share will be maintained as a copyright fund share. The copyright fund will be administered by the Office of the Provost to support the development of pedagogical innovation. When negotiating

sponsored research agreements, to the extent that University ownership is not necessary to fulfill its obligations to a sponsor the University shall, whenever practicable, make reasonable efforts to protect the ownership rights of the authors.

B. Works Made for Hire. Exceptions to this custom also arise when authors create works considered to be "works made for hire." Such works are the property of the University. For purposes of this policy, "works for hire" are those works that are prepared by the author pursuant to the express direction of a supervisor, prepared pursuant to the specific provisions incorporated within a position description, or prepared in the performance of any administrative duty. Works created by authors in the course of their instructional or research activities shall not be considered "works made for hire."

B.1 Prior to the preparation of the "work made for hire," the University may request, and if so the authors shall provide, an assignment or other declaration of the University's ownership of that work. Authors who are also principal investigators and have responsibility for other authors will secure assignments from said authors prior to the preparation of a "work made for hire." Failure to secure assignment does not negate the University's ownership of the work. In the event of subsequent disagreement over ownership of a "work made for hire," the case shall be referred to the committee noted in 4.B.

B.2 Net revenues realized from the commercialization of "works made for hire" will be distributed as in A.2.

B.3 The University will have the authority to waive the "work for hire" claim where it judges that doing so is in the interest of the University.

C. Exceptions to this policy arise when the faculty create works that make substantial use of the services of University non-faculty employees or University resources. When such support is provided the works produced shall belong to the University unless there is explicit agreement otherwise. The faculty member(s) and the units providing such support shall agree in writing on the ownership of such works prior to the provision of the support. Notwithstanding the above, the faculty member(s) may subsequently petition the University to waive its ownership. The determining official for this action is the Provost, or at the Provost's designation, the dean of the school in which the faculty member has their primary appointment(s); or the Provost in the case where a dean is the creator. In the event of subsequent disagreement over the use of University resources in the creation of a work, the case shall be referred to the committee noted in 4.B.

C.1 The reference to "substantial use of the services of University non-faculty employees or University resources" means the use of University funds, facilities, equipment, or other resources significantly in excess of the norm for educational and research purposes in the department or school in which the creator(s) hold their primary appointment(s). Academic year salary, office, usual library resources, usual secretarial and administrative staff resources or usual computer equipment, among other things, are not regarded as constituting "substantial use of services of University non-faculty employees or University resources." Any question about what constitutes substantial resources should be referred to the committee noted in 4.B.

C.2 Net revenues realized from the commercialization of such works will be distributed as in A.2.

D. A given intellectual property may be protected in some cases inclusively by United States patent, copyright and trademark laws, and in some cases by only one or two such intellectual property laws, with each body of law protecting a different feature of the given intellectual property. Consequently, definitions in the Patent and Tangible Research Property Policies and Procedures and the Copyright Policy and Procedures will at times overlap. When a single license agreement incorporates more than one type of intellectual property protection, prior to the execution of said license agreement, a written agreement shall be executed by the University and the authors stipulating which University intellectual property policy is applicable.

2. Commitment of Effort (See also *Conflict of Interest Policy, II.E.10*).

A full-time faculty member's primary commitment in teaching and research is to the University of Pennsylvania. Any substantial teaching carried out in another setting, regardless of medium, for which students receive academic credit, must receive prior approval of the faculty member's dean. Any teaching, research or other activity in which the faculty member's department or school is actively engaged will presumptively claim the faculty member's primary effort, and carrying out these activities in another setting will also require a specific release from such commitment by the dean. The dean and faculty of each school should decide upon those academic activities (currently engaged in or reasonably likely to be engaged in by the school in the foreseeable future) other than teaching and research that are subject to the above restrictions.

3. Audio-Visual Works

Any videotapes or other recordings of classes or courses intended for students at the University of Pennsylvania belong to the University and may not be further distributed without permission from the appropriate school dean. Such audio-visual works may not be used commercially without the permission of everyone who appears in the final program.

A. This policy is not intended to apply to audio-visual works or recordings that have a specific short term use such as videotapes of lectures by job candidates, audio-visual works used to provide an alternative lecture when students may miss class because of a religious holiday, or audio-visual works used in teacher development programs.

B. Net revenues realized from the commercialization of audio-visual works and recordings using other media will be distributed as in 1.A.2.

4. Procedures for the Administration and Management of Copyrightable Works

A. Periodic Review of Policy. The Policy Statement on Copyrights and Commitment of Effort shall be reviewed on a periodic basis by a review committee appointed by the Provost in consultation with the Faculty Senate to determine whether it is accomplishing its intended purposes; is in conformity with federal and state laws, including intellectual property laws; and, is consistent with prevailing norms in university-industry relationships. The review committee shall make recommendations to the Provost who shall confer with the President.

B. The Provost and Faculty Senate jointly shall annually appoint a faculty committee to resolve any disputes involving the

interpretation or administration of the Policy Statement on Copyright and Commitment of Effort. The committee may, through procedures of its own design, review, mediate, and decide any such dispute brought before it. The Intellectual Property Officer shall provide staff support for the committee. Any decision of the committee may be appealed to the Provost, who will make a final decision for the University.

5. Appeal Mechanisms

This policy does not preclude a faculty member's access to appeal mechanisms, such as the Committee on Academic Freedom and Responsibility, Faculty Grievance Procedure, or the Provost.

Additional Definitions

Assignment

In addition to Section 5.0.2 of the Patent and Tangible Research Property Policies and Procedures, the execution of a formal document that transfers the right, title and interest of an author of a copyrightable work.

Authors

The University faculty who would be considered authors under copyright laws of the United States and other jurisdictions, for such works as books, journals, articles, text, administrative reports, studies or models, glossaries, bibliographies, study guides, instructional materials, laboratory manuals, syllabi, tests, proposals, lectures, musical or dramatic compositions, films, film strips, charts, transparencies, video or audio recordings or broadcast, computer software, CD ROMS, circuitry, microprocessor designs and other works that may be copyrightable under laws of the United States and other jurisdictions. In the context of computer software, for purposes of this policy, authorship refers to those persons who conceive and make significant intellectual contributions to the development of such computer software, as well as to those persons who author source code, object codes, masks, patterns and the like who would be considered authors under the copyright laws of the United States and other jurisdictions.

Copyrightable Work

A work fixed in tangible medium that may be copyrightable under laws of the United States and other jurisdictions.

Computer Software

The source code and the object code, and related documentation, of computer programs and designs of computer circuitry and microprocessor chips.