

**ACTION ITEM #1**  
Revisions to the Faculty Manual  
(Erica Weintraub Austin)

TO ALL MEMBERS OF THE BOARD OF REGENTS

SUBJECT: Revisions to the Faculty Manual

PROPOSED: That the Board of Regents approve the attached changes to the Faculty Manual – Section IV H/ Copyrights

SUBMITTED BY: Erica Weintraub Austin, Interim Provost and Executive Vice President

SUPPORTING INFORMATION: On September 15, 2015, the Faculty Affairs Committee approved the attached recommended changes from the Office for Economic Development & External Affairs to Section IV.H Copyright Policy, of the Faculty Manual. This recommendation was passed by the Faculty Senate on October 8, 2015.

TO: Richard Zack, Chair of Senate

FROM: Judith McDonald, Chair of the Faculty Affairs Committee



SUBJECT: Proposed changes to the *Faculty Manual* regarding Copyrights and Royalties

DATE: September 16, 2015

On September 15, 2015, the Faculty Affairs Committee approved the attached recommended changes from the Office for Economic Development & External Affairs to Section IV.H Copyright Policy, of the Faculty Manual.

**CURRENT-Proposed Revisions to Faculty Manual Section IV, H.**  
**Copyright Policy -language in Faculty Manual (as approved 050814)**

## **H COPYRIGHT POLICY**

The United States government grants a copyright to the author or creator of original works of authorship. Copyrights for works created after January 1, 1978, are granted for the term of the author's life and an additional 70 years. In the case of a work made for hire, the term of the copyright is 95 years from the year of first publication or 120 years from the year of creation, whichever expires first. The copyright allows the author or persons assigned rights for the author to rightfully withhold others from copying or using the works without permission. A copyright is automatically secured when the work is created or "fixed" in a tangible medium. No publication or registration or other action in the Copyright Office is required; however, it is required that a copyright be registered before a lawsuit is brought. Refer to the U.S. Copyright Office at <http://lcweb.loc.gov/copyright/> for further information.

### **1. Copyright Policy Objectives**

a.) The University encourages the publication of scholarly works as an inherent part of its educational mission. In this connection, it acknowledges the right of faculty, staff, and students to prepare and publish, through individual initiative, architectural designs, photographs and slides, illustrations, computer software, multimedia presentations, sound recordings, video productions, telecasts, music, grant proposals, scholarly publications, and other material. The following statement of University policy on ownership of copyrightable material is provided to clarify the respective rights and responsibilities of individuals and the University in this important area. OC will administer the policy.

### **2. Copyright Ownership**

#### **a.) University Ownership of Copyrighted Works**

(1) Work Made for Hire. Except as otherwise provided in the Employee Ownership of Copyrighted Works section of this Policy, sub section 2.b of this manual or as otherwise provided in WSU policy, the University shall own all copyrightable works that were created as a "work made for hire." "Work made for hire," as defined by the Copyright Act, includes (1) works prepared by University employees within the employee's scope of employment, or (2) works not created within the employee's scope of employment but that are specially commissioned by the University pursuant to a written agreement that is signed by both the University and the employee.

(2) Sponsored Agreements. The University shall have the right to perform its obligations with respect to copyrightable works, data, prototypes, and other intellectual property under any contract, grant, or other arrangement with third parties, including sponsored research agreements, license agreements, and the like. When a work is created in a sponsored program, Employees shall assign all rights to the University ~~or~~ unless otherwise required by the sponsored agreement necessary to facilitate obligations under grants and contracts.

(3) The Employee shall own copyrightable works unrelated to the employee's University

employment responsibilities that are developed on an employee's own time and without University support or use of University facilities.

b) Faculty/Employee Ownership of Copyrighted Works.

(1) The University shall not assert ownership in the following works created by Faculty/Employees within the Faculty's/Employee's scope of employment including, but not necessarily limited to, the following:

- (a) scholarly material,
- (b) educational material(eg., text books),
- (c) art works,
- (d) musical compositions,-
- (e) sound recordings
- (f) dramatic and nondramatic literary works, and
- (g) Creative works fixed in a film, video, or other media.

unless (1) substantial kinds or amounts of University resources, as defined below, were used to create the works; (2) the works are created pursuant to a written agreement between the employee and the University; or (3) the works are created pursuant to the terms of a third-party sponsored agreement, contract, or grant, specifically allocating ownership rights to the University/university.

- (a) scholarly material,
- (b) educational material,
- (c)(a) art works,
- (d) musical compositions, and
- (e) dramatic and nondramatic literary works.

(2) Substantial University Resource Use Resulting in University Ownership. The University shall assert an ownership interest for works identified in the previous paragraph to which the University contributes substantial kinds or amounts of resources. Each department or unit of the University may publish, withis required to propose for the approval of the Provost or his/her designee, a description of what constitutesdepartment specific resources should not constitute substantial kinds or amounts of University resources. In, which may or may not include computers and software routinely distributed to faculty in the event that a department or unit does not publish such a policy prior to perform the creation of faculty's duties to the worksUniversity. (see form in BPPM)) Unless the Provost has approved such departmental exceptions, substantial kinds or amounts of resources shall mean the use of staff or clerical time other than peer review; provision of university funding specifically for or in support of the development of the work; not to include professional leave, and provision of equipment, facilities, and supplies, beyond that which is usually provided for meeting employment obligation. Substantial kinds or amounts of resources shall not include professional leave provided to faculty.

Use of equipment, facilities, and supplies which are usually provided for faculty to meet employment obligation typically include, but are not necessarily limited to, office space, a computer and peripherals including a printer and software and resources included in the BPPM Form which may be unit specific in a department proposal as provided above, which has been approved by the Provost or designee. Note: When a service center is open to use by the public through a facility use agreement or contract, the faculty's use of the service

center on the same terms and conditions available to the public is not considered a significant resource.

c.) Student Writings. Students employed by the University in any capacity are covered by the terms of this policy. In addition, where a student receives financial aid or remuneration under a sponsored research, training, or fellowship program, his or her rights in copyrightable material are limited by the terms of the University agreement with the sponsoring agency. The University has no ownership rights in copyrightable material developed by students who are not employees.

d.) Patentable Works. Some works, particularly certain types of computer programs, may qualify for patent as well as copyright protection. An author, upon recognizing that one of his or her works is of this kind, is responsible for disclosing it to OC for a determination of (i) ownership and (ii) whether the University wishes to seek patent protection should ownership be vested in the University. OC, following the procedures set out in the University's patent policy, will make these determinations. If ownership of such a work is vested in the University under the patent policy, but the University decides not to protect the work, ownership and disposition of the work is then determined in accordance with this Policy. If Faculty wish to appeal OC's or its staff's decisions, the procedure set out in section 6 of the Patent Policy shall be followed.

### **3. Administration of the Copyright Policy**

a.) Disclosure. Material subject to copyright and owned by the University under the circumstances set forth in the Copyright Policy should be promptly disclosed to OC.

b.) Determination of Ownership in Unclear Cases. Such determinations will be made by OC and will follow the guidelines set out in this Policy. Either the University or the author may initiate this review.

c.) Distribution of Royalties. See the Division of Copyright Royalties section of this document.

d.) General Advice and Assistance. Contact the Washington State University, Office of Commercialization, WSU Research and Technology Park, Pullman, WA 99164-1802, telephone (509) 335-5526.

### **4. Management of Copyrights**

a.) The University will retain ownership of its copyright interests for development by OC or other University publishing units or Colleges, e.g., Office of Publications and Printing, Educational Telecommunications and Technology, Information Technology, or the Extended Degree Program. The University may select a managing agent and execute any necessary assignments to the managing agent.

b.) Copyright registration is simple. Software commercialization through sale or licensing may be complex and expensive requiring active participation by the authors and the University.

### **5. Division of Copyright Royalties on University Owned Copyrights managed by OC**

~~a.) (1) The University retains all monetary proceeds from commercialization of University-owned copyrighted works (often software). When practicable and consistent with any related agreements, the University or its designee may collect and distribute royalties, fees, equity interests, or dividends to authors and University in accordance with procedures established by the University. The guidelines as follows will be used most commonly, but the University reserves the right to adjust the distribution of its share.~~

a.) ~~The University or its designee, OC,~~ will deduct the costs of obtaining and maintaining legal protection, for each copyrighted work to arrive at “~~adjusted income~~Adjusted Income.”

~~(2) The University or its designee, OC,~~ will deduct twenty percent (20%) from ~~adjusted income.~~Adjusted Income. This deduction is directed toward covering the expenses for administering OC.

~~(3) The University or its designee, OC,~~ will ~~first~~ reimburse the appropriate University unit, including OC, for expenses advanced in developing and distributing the copyrighted work, e.g., distance learning courseware. The remaining income is the Net Income.

~~(4) Copyright royalty income~~(4) Net Income for each copyrighted work will be distributed to authors and/or creators and/or contributors as identified in Patent Policy

~~V. a.2,~~ Section 8. Division of Patent Royalties.

b.) In the event of multiple authors, the authors will agree among themselves as to the distribution of the income accruing to the authors; distribution of the authors' share shall be made only upon receipt of a signed agreement between the authors.

c.) The University or its designee may negotiate, but shall not be obligated to negotiate, for equity interests in lieu of or in addition to royalty and/or monetary consideration as a part of an agreement relating to Inventions or Copyrightable Works. Any equity interests acquired pursuant to this section shall be assigned to the Washington ~~State Research Foundation or a designee of the~~ University ~~Foundation~~ for management. Neither the Washington ~~State University Research~~ Foundation nor the University or its designee acts as a fiduciary for any person concerning equity or other consideration received under the terms of this regulation.

## 6. Division of Copyright Royalties on University Owned Copyrights managed by another University unit (University publishing units or Colleges)

The University unit manages collection and distribution of all net monetary proceeds from commercialization of University-owned copyrighted works managed by an University unit other than OC. When practicable and consistent with any related agreements, the University unit may collect and distribute royalties, fees, proceeds from equity interests, or dividends to authors and University in accordance with the royalty distribution guidelines agreed to by the parties. Distribution of the University share of the net income from commercialization will be as outlined in Section 5a, unless other contractual arrangements are agreed to by all parties, including the managing unit or college, who are

eligible to share in the income from the copyrighted works.

**7. Division of Copyright Royalties on University Owned Copyrights managed by an agent other than OC and another University unit**

The University manages and distributes all net monetary proceeds from commercialization of University- owned copyrighted works managed by an agent other than OC or another University unit, including University Publications. When practicable and consistent with any related agreements, the University or its managing agent may collect and distribute royalties, fees, proceeds from equity interests, or dividends to authors and University in accordance with the royalty distribution guidelines agreed to by the parties. If University has contracted that the works are to be managed by a third-party as provided in subsection 4a, that managing agent shall be entitled to deduct its contracted fee from those proceeds prior to the University receiving its share of the monetary proceeds. Distribution of the University share of the net income from commercialization will be as outlined in Section 5a, unless other contractual arrangements are agreed to by all parties, including the managing unit or college, who are eligible to share in the income from the copyrighted works.

## IV H. Copyright Policy

The United States government grants a copyright to the author or creator of original works of authorship. Copyrights for works created after January 1, 1978, are granted for the term of the author's life and an additional seventy (70) years. In the case of a work made for hire, the term of the copyright is ninety-five (95) years from the year of first publication or one hundred twenty (120) years from the year of creation, whichever expires first. The copyright allows the author or persons assigned rights for the author to rightfully withhold others from copying or using the works without permission. A copyright is automatically secured when the work is created or "fixed" in a tangible medium. No publication or registration or other action in the Copyright Office is required; however, it is required that a copyright be registered before a lawsuit is brought. Refer to the U.S. Copyright Office at <http://lcweb.loc.gov/copyright> for further information.

### 1. Copyright Policy Objectives

a) The University encourages the publication of scholarly works as an inherent part of its educational mission. In this connection, it acknowledges the right of faculty, staff, and students to prepare and publish, through individual initiative, architectural designs, photographs and slides, illustrations, computer software, multimedia presentations, sound recordings, video productions, telecasts, music, grant proposals, scholarly publications, and other material. The following statement of University policy on ownership of copyrightable material is provided to clarify the respective rights and responsibilities of individuals and the University in this important area. OC will administer the policy.

### 2. Copyright Ownership

a) University Ownership of Copyrighted Works

(1) Work Made for Hire. Except as otherwise provided in the Employee Ownership of Copyrighted Works section of this Policy, the University shall own all copyrightable works that were created as a "work made for hire." "Work made for hire," as defined by the Copyright Act, includes 1) works prepared by University employees within the employee's scope of employment, or 2) works not created within the employee's scope of employment but that are specially commissioned by the University pursuant to a written agreement that is signed by both the University and the employee.

(2) Sponsored Agreements. The University shall have the right to perform its obligations with respect to copyrightable works, data, prototypes, and other intellectual property under any contract, grant, or other arrangement with third parties, including sponsored research agreements, license agreements, and the like. Employees shall assign all rights to the University or as required by the sponsored agreement necessary to facilitate obligations under grants and contracts.

(3) The Employee shall own copyrightable works unrelated to the employee's University employment responsibilities that are developed on an employee's own time and without University support or use of University facilities.

b) Faculty Ownership of Copyrighted Works.

(1) The University shall not assert ownership in the following works created by Faculty within the Faculty's scope of employment, unless 1) substantial kinds or amounts of University resources, as defined below, were used to create the works; 2) the works are created pursuant to a written agreement between the employee and the University; or 3) the works are created pursuant to a third-party sponsored agreement, contract, or grant, specifically allocating ownership rights to the University.

(a) scholarly material,

(b) educational material, 2015-16 Faculty Manual Board of Regents Approved 05.08.15

- (c) art works,
- (d) musical compositions, and
- (e) dramatic and nondramatic literary works.

(2) Substantial University Resource Use Resulting in University Ownership. The University shall assert an ownership interest for works identified in the previous paragraph to which the University contributes substantial kinds or amounts of resources. Each department or unit of the University may publish, with the approval of the Provost, a description of what constitutes substantial kinds or amounts of University resources. In the event that a department or unit does not publish such a policy prior to the creation of the works, substantial kinds or amounts of resources shall mean the use of staff or clerical time other than peer review; provision of university funding specifically for or in support of the development of the work; not to include professional leave, and provision of equipment, facilities, and supplies beyond that which is usually provided for meeting employment obligation.

c) Student Writings. Students employed by the University in any capacity are covered by the terms of this policy. In addition, where a student receives financial aid or remuneration under a sponsored research, training, or fellowship program, his or her rights in copyrightable material are limited by the terms of the University agreement with the sponsoring agency. The University has no ownership rights in copyrightable material developed by students who are not employees.

d) Patentable Works. Some works, particularly certain types of computer programs, may qualify for patent as well as copyright protection. An author, upon recognizing that one of his or her works is of this kind, is responsible for disclosing it to OC for a determination of (i) ownership and (ii) whether the University wishes to seek patent protection should ownership be vested in the University. OC, following the procedures set out in the University's patent policy, will make these determinations. If ownership of such a work is vested in the University under the patent policy, but the University decides not to protect the work, ownership and disposition of the work is then determined in accordance with this Policy. If Faculty wish to appeal OC's or its staff's decisions, the procedure set out in section 6 of the Patent Policy shall be followed.

### **3. Administration of the Copyright Policy**

- a) Disclosure. Material subject to copyright and owned by the University under the circumstances set forth in the Copyright Policy should be promptly disclosed to OC.
- b) Determination of Ownership in Unclear Cases. Such determinations will be made by OC and will follow the guidelines set out in this Policy. Either the University or the author may initiate this review.
- c) Distribution of Royalties. See the Division of Copyright Royalties section of this document.
- d) General Advice & Assistance. Contact the Washington State University, Office of Commercialization, WSU Research and Technology Park, Pullman, WA 99164-1802, telephone (509) 335-5526.

### **4. Management of Copyrights**

- a) The University will retain ownership of its copyright interests for development by OC or other University publishing units or Colleges, e.g., Office of Publications and Printing, Educational Telecommunications and Technology, Information Technology, or the Extended Degree Program. The University may select a managing agent and execute any necessary assignments to the agent.
- b) Copyright registration is simple. Software commercialization through sale or licensing may be complex and expensive requiring active participation by the authors and the University. 2015-16 Faculty Manual Board of Regents Approved 05.08.15

### 5. Division of Copyright Royalties

a) The University retains all monetary proceeds from commercialization of University-owned copyrighted works (often software). When practicable and consistent with any related agreements, the University or its designee may collect and distribute royalties, fees, equity interests, or dividends to authors and University in accordance with procedures established by the University. The guidelines as follows will be used most commonly, but the University reserves the right to adjust the distribution of its share.

(1) The University or its designee will deduct the costs of obtaining and maintaining legal protection for each copyrighted work to arrive at “adjusted income.”

(2) The University or its designee will deduct twenty percent (20%) from adjusted income. This deduction is directed toward covering the expenses for administering OC.

(3) The University or its designee will first reimburse the appropriate University unit for expenses advanced in developing and distributing the copyrighted work, e.g., distance learning courseware. The remaining income is the Net Income.

(4) Copyright royalty income will be distributed as identified in Patent Policy IV.G.8.

b) In the event of multiple authors, the authors will agree among themselves as to the distribution of the income accruing to the authors; distribution of the authors’ share shall be made only upon receipt of a signed agreement between the authors.

c) The University or its designee may negotiate, but shall not be obligated to negotiate, for equity interests in lieu of or in addition to royalty and/or monetary consideration as a part of an agreement relating to Inventions or Copyrightable Works. Any equity interests acquired pursuant to this section shall be assigned to the Washington State University Foundation for management. Neither the Washington State University Foundation nor the University acts as a fiduciary for any person concerning equity or other consideration received under the terms of this regulation.