

University of Delaware

Policies and Procedures Manual

Section: Research

Policy Number: 6-7

Policy Name: Copyrightable Material

Date: October 1, 1981

Revisions: June 5, 1989; March 1, 1996

I. PURPOSE

To outline the University's policy on copyrightable material.

II. POLICY

A. Foreword

The University of Delaware, hereinafter referred to as the University, recognizes that its faculty and staff, as part of their normal research and other scholarly activities, may develop materials which, in the interest of the author* and the University, should be protected by copyrights. Accordingly, it is considered desirable to provide policies and procedures that:

1. assist faculty and staff in realizing tangible benefits from their creative efforts;
2. establish guidelines for defining the rights of ownership to materials produced by faculty or staff;
3. insure control of use, within the University structure, of curriculum material developed at the University by a faculty or staff member;
4. insure the author against loss of rights of reproduction for noncommercial use of material in which proprietary rights rest with the University; and
5. provide guidance for safeguarding against loss of proprietary rights through inadvertent public disclosure.

B. General Principles

1. In accordance with established custom at institutions of higher learning, copyright ownership of textbooks, manuscript, nonprint materials, etc., produced by the individual effort of the author, as well as any royalties therefrom, accrue to the benefit of the author. If, during the preparation of the material, the University incurs some incremental costs as defined in Section D.1a, the author must

reimburse the University for these costs in order to obtain full equity in the copyright.

2. When material has been prepared under a specific written contract, grant, or assigned project agreement, the ownership of the copyright will be determined by the terms of the contract, grant, or assigned project agreement. Assigned project is used herein to refer to a University project covered by a written assignment under which the assignee is allocated time to carry out the work.

These two statements represent the basic principles of the policy. The balance of the policy only expands upon these principles and presents administrative procedures.

C. Administrative Responsibility and Procedures

The copyright policy is administered by the Office of the Provost. The responsibility for the everyday administration of the policy has been delegated to the Vice Provost for Research.

Any member of the University faculty or staff who produces material intended for publication or release shall notify his/her departmental chairperson or division head of intent to publish, and shall provide sufficient information to determine the equity interests of the University where it is appropriate. The chairperson shall review this material, considering the contractual obligations of the University and the possible copyright value of the material. When in doubt the counsel in the Office of the Vice Provost for Research should be consulted. In the event that the University is judged to have rights or obligations, the author shall give copyright protection to the material in the name of the University. A copy shall then be sent to the Vice Provost for Research, who will register the copyright. Any decision on rights or equity in the copyright will be made by the Vice Provost for Research after consultation with the author.

D. Rights and Obligations Of University and Author

1. Works Resulting from Activities Funded within the University.
 - a. Where there are incremental costs to the University associated with the production of creative works by a member of the University community--for example, overtime typing costs, hiring of extra secretarial help, costs of tape, film, or other expendable materials--the author shall reimburse the University for such out-of-pocket costs if he/she is to own the copyright. Under these circumstances the University will not ordinarily charge rental on University facilities, including equipment or space, when its use does not interfere with other University uses.

- b. The University provides support facilities to assist faculty and staff in strengthening existing educational programs or in creating new ones. Unless specifically covered by an agreement, assignment, contract, or grant entered into before initiation of the work, title to such materials remains with the author; but, in recognition of the services provided, the author must grant the University a royalty-free right to reproduce and use such works within the University.

In the case of works that result in very substantial income to the author, it is the custom of some universities that the author makes a gift to the University in recognition of the contribution to the work made by the availability of University facilities. It is hoped that this custom will be followed at this University, but this decision is left to the judgment and good will of the author, and is not stated as a requirement or even an expectation.

2. Works Resulting from Activities Sponsored by an Outside Agency.

Ownership of works in this category is controlled by the terms of the grant or contract which provides the funds in support of the work. In the case of government contracts or grants, the government always retains the right to duplicate and use the works for government purposes. Where no obligation to convey to the sponsor exists, all rights revert to the author with the reservation to the University of the right of reproduction and use in the furtherance of its educational responsibilities.

3. Works Resulting from Activities Sponsored by the University.

Works in this category may be divided into two classes, (a) those resulting from partial funding by the University, and (b) those resulting from an assigned project with total funding by the University. Rights in these cases are as follows:

- a. For materials developed with partial University funding as defined in Section D.1a, and when the author does not reimburse the University for out-of-pocket costs, joint rights to ownership and disposition of these materials, and sharing of any royalty income as provided in Section F will be negotiated between the University and the author as stated in Section C.
- b. For materials developed as the result of an assigned project with total funding by the University, rights of ownership abide with the University, although title to such materials

may be assigned to the author at the option of the University with sharing of any royalty income as provided in Section F.

The word "funding" as used in this section means funds from the University's resources and also funds from outside sources administered by the University.

In instances where title to the copyright rests with the University, the University, in recognition of the author's input, will provide to the author, upon written request, a copy of the material and the right of duplication for the author's own use.

E. Settlement of Disputes

In accordance with existing University regulations, unreconcilable differences shall be referred for final disposition to a three member panel consisting of the author or his/her representative, the Provost or his/her representative, and a third member to be selected from the University community by the first two members.

F. Division of Income

In situations where the University has an equity, and income accrues either to the University or to the author as a result of sales or merchandising of a work, the income shall accrue to the University, until the University has recovered its out-of-pocket costs for securing the copyright, advertising, printing, etc. Thereafter, the author shall receive 75% of the income and the University 25% of the income unless, before royalty payments begin, some other arrangement has been agreed upon by the parties in interest. In computing University costs, not only incremental costs but rental value of any major equipment shall be included.

G. Limitations

No part of this document shall abridge in any way the rights of any interested party to remedy an alleged breach or ruling under this policy statement through legal action.

APPENDIX A

Uncopyrighted Materials

Although this instrument is directed primarily to material subject to copyright, it is recognized that questions of rights may also arise in connection with materials which are produced in the course of an author's duties in the University and which are (1) not subject to copyright or (2) for which copyright is not desired, or (3) for which the right to copyright has been lost. For the materials in these three

categories, in recognition of the mutuality of interests in such works, and in acknowledgment of the University's responsibility to further teaching, research, and the dissemination of knowledge, the author agrees not to interpose any objections to the University reproducing and using such works within the University community. However, if the author so requests, the University agrees to use him/her as an unpaid consultant on the use of the material within the University community. The originals of the work submitted by the author will be returned to him/her, with a copy of the final material.

Submitted by: Office of the Provost

Copyright, © 1996, University of Delaware. All rights reserved.
Please direct questions to the Executive VP office.