

Copyright

Summary/Purpose: To designate the University of Mississippi policy for intellectual property rights as they pertain to copyrights.

Preamble

The University of Mississippi (UM) strongly affirms its commitment to provide an environment that supports the generation and dissemination of knowledge for the public good. UM embraces the long-standing academic tradition that the institution, the public, and the author are well served when scholarly, aesthetic, and pedagogical pursuits result in the sharing of knowledge with colleagues and the public through formats traditional to academe, such as scholarly books or articles, papers at professional conferences, works of art and musical compositions, and textbooks. UM is pleased to share in the prestige accorded the creators of such materials and endorses the belief that the institution and the public it serves benefit from the stimulating educational environment encouraged by their creation and publication.

UM also recognizes that changes in technology and society both reflect and result in changes in the role of the University and its personnel, and in the responsibility of the institution to the public it serves. Increasingly, outcomes of research have potential for success in a commercial as well as an academic sphere, a potential whose realization offers benefits in addition to the enhancement of education and research but whose development requires extensive and directed support. UM acknowledges its obligation to its researchers to make this support available and its obligation to the State of Mississippi to contribute to the economic development of the state and to the financial health of this institution. UM therefore has the responsibility both to promote the commercial development of research outcomes and to share in the benefits of commercial success. Further, UM has the responsibility to protect the academic traditions that have so long and so well served institutions of higher education.

The University of Mississippi Copyright Policy is based on the belief that these responsibilities are not in conflict; rather, together, they offer new and renewed opportunities, energies, and directions. UM accepts an active role in promoting the development of copyrightable materials in a manner consistent with public interest, and acknowledges that public interest requires both academic excellence and responsible fiscal management. This Policy is written with the intention of promoting excellent, innovative research by identifying and protecting the rights of the University, its personnel, and the public.

Foundation and Scope of the UM Copyright Policy

United States Copyright law designates the employer as the owner of copyrightable work prepared by employees within the scope of their employment. UM elects to relinquish its claim to ownership of certain of those materials (as identified later in this policy), in keeping with academic tradition and in pursuit of an appropriate public good. This University of Mississippi Copyright Policy identifies the copyrightable materials to which UM will exercise its rights and establishes procedures for determining and protecting those rights. Ownership of materials not described in this policy can be assumed to belong to the creator.

Definitions

Copyright: The exclusive right to reproduce, prepare derivative works from, distribute copies, transfer ownership (by rental, lease, or lending), perform publicly, or display publicly the copyrighted work, or to authorize another person to perform any of those actions.

Copyrightable Materials: Materials subject to copyright protection are original works of authorship fixed in any tangible medium of expression now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include literary works; musical works (including accompanying words); dramatic works (including accompanying music); pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion picture and other audiovisual works; sound recordings; and architectural works. Copyright protection does not extend to ideas, procedures, processes, systems, methods of operation, concepts, principles or discoveries, even when presented in copyrightable form.

Creation of Copyrightable Materials: A copyrightable work is “created” when it is fixed in a tangible medium from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

Creator/Creators: The term designates the individual, group, department, or unit creating the copyrightable material.

Externally Sponsored Works: Externally Sponsored Works are projects supported financially by non-University (external) entities through such mechanisms as grants, contracts, and cooperative agreements.

Fair Use: Fair Use of a copyrighted work for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research is not an infringement of copyright. In determining whether “fair use” has been made of a work in any particular case, other factors to be considered will include the following: the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and the effect of the use upon the potential market for or value of the copyrighted work.

Income: Income refers to any form of income resulting from the exercise of rights exclusive to the copyright owner, including but not limited to income derived from the sale, distribution, or licensing of copyrighted materials.

Public Domain: A work is said to be placed “in the public domain” when it is made available for use by anyone at anytime, without explicit authorization or restrictions on use. A work in the public domain is outside copyright protection.

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Student: The term “Student” refers to any full-time or part-time undergraduate or graduate student, regardless of whether the student receives financial aid or remuneration in any form from UM.

Substantial Use: Substantial Use of University resources occurs when development or creation involves the use of University resources beyond the following:

1. customary use of assigned office space, laboratories, or studios, or of libraries; of library collections, subscriptions or services; of secretarial or other staff assistance; of computer time or computer or lab equipment on hand; of network or Internet access; of standard office equipment and supplies.
2. sabbaticals; summer or other research grants provided by the University or University-affiliated units; other support customarily provided to faculty and staff.

Transfer of Ownership: Transfer of ownership occurs after copyright has been obtained and may apply to any or all of the exclusive rights granted copyright owners. The written agreement of transferal must be signed by both parties to a transferal. The transfer of copyright ownership may be recorded in the U.S. Copyright Office.

UM Personnel: The term “UM Personnel” includes all faculty and staff with full, part-time, or adjunct status, and any other employee, agent, or Fellow of the University, during the course of employment.

University: “University” refers to The University of Mississippi at its Oxford campus and those locations administered from the Oxford campus.

Student Work

The University makes no claim to copyright ownership of works created by students working on their own, i.e., not within the scope of an employment relationship with the University or with one of its employees, and not making Substantial Use of University resources.

1. Students working on a project governed by a contract or agreement to which the University is a party shall be bound by the terms of that contract or agreement.
2. Students who are hired to perform specific tasks that contribute to a copyrightable work will ordinarily have no rights to ownership of that work, regardless of the source of funds from which they are paid. In such cases, the party who owns the copyright of the rest of the work will ordinarily retain copyright ownership of the portion contributed by the student.
3. Students working collaboratively with University employees on projects that result in copyrightable work may be granted the same rights and obligations of copyright ownership as would another University employee working collaboratively on the project. Students and University employees should establish these rights at the outset of their collaboration.
4. Students may also be subject to rules and restrictions of their unit or of the Graduate School that are not inconsistent with the University Copyright Policy. For example, students who

copyright their theses or dissertations must grant the University rights to reproduce and distribute copies of their works in accordance with the policies of the University, College, School, Department, or other unit.

Ownership of Copyright

It is traditional at The University of Mississippi and other universities, for copyrightable works of a faculty member to be deemed the property of the creator, who is considered to be entitled to determine how the works are to be disseminated and to keep any income they produce. This tradition reflects the University's commitment to encourage members of the University of Mississippi community to write and to publish what they wish.

The University recognizes that changes made to the Copyright Law in 1976, its amendments and cases interpreting it have made parts of the law of copyright ownership unclear. In order to remove any doubt cast by the lack of clarity in the law and in recognition of our longstanding practice and tradition, The University disclaims any ownership interest in the copyright of works created by faculty, staff, postdoctoral fellows and postdoctoral associates and students, whether in traditional or nontraditional forms, except in the following cases:

Supervised Works: The University will own the copyright to works created

- (i) by student employees in the course of their assigned duties of employment, including duties as teaching or research assistants, or
- (ii) by faculty members, staff members or postdoctoral fellows or associates as part of an assigned task where the University
 - (a) specifically assigns an individual to create a particular work or
 - (b) selects or supervises choice of subject matter and supervises content, course, and direction of the effort to create the work or retains editorial control over the final work product.

Supported Works: In the event that Substantial Use of University resources is involved, the creator and the University will share copyright ownership. Reimbursement of Substantial Use costs and/or a division of royalties may be required.

Externally Sponsored Works: Where copyrighted materials are developed by an investigator in the course of sponsored research funded by an outside agency, ownership of the copyright will be determined by the applicable terms of the funding agreement. The University reserves the right to seek copyright ownership for itself and/or its employees as appropriate during negotiation of the award or externally sponsored program. If the agreement is silent on copyright ownership, then the creator of the work will have full ownership of the copyright in any works created in the course of sponsored research.

Commercial Development of Works

The University reserves the right to develop commercially any work in which it owns or shares ownership of the copyright.

When UM is the sole owner of the copyright in the work, it has the sole right to

- determine whether to register the copyright, to take other action to protect its interests, or to place the material in the public domain;

- determine the manner in which the material is to be distributed to or used by others;
- determine the charges (if any) for use of the materials;
- decide to assign title to the creator, or to a third party.

When UM and the creator share ownership of the copyright, both owners have the right to register the work, to grant nonexclusive licenses to use the work, and to assign their interests in ownership to a third party.

When ownership to copyright vests in the creator, the creator may choose to assign any or all rights in the copyrightable material to UM or to a third party. UM may require the creator to assign partial ownership of the copyright to the University in exchange for assistance in commercially developing and exploiting a work. Copyright law requires that all assignments must be made in writing and must be signed by the assignor. Agreements affecting ownership interests in copyrights should specify the division of proceeds from the work between the University and the creator.

UM is obligated to make timely determination of its interest in registering the copyright in any work in which it owns or shares ownership of the copyright. UM is further obligated to demonstrate due diligence in efforts to commercialize UM-owned copyrightable materials, or to release all or part of its interest to the creator. Should UM fail to demonstrate due diligence, the creator has the right to request in writing that copyright be assigned to him/her or to a specified third party. Such a request will be made to the Vice Chancellor for Research.

If UM decides not to continue efforts to commercialize and/or market the materials, the Vice Chancellor for Research will notify the creator in writing. The creator then has the right to request that copyright be assigned to him/her or to a specified third party. The notification in writing will include the understanding that further efforts to commercialize and/or market the materials will be at the creator's expense, on his/her own time, and will involve no Substantial Use of University resources.

The University will consult or provide a reasonable opportunity for the creator's consultation with respect to use made of a copyrighted work within the University or before any license for its use outside of the University is granted. UM will make every effort to involve the creator(s) in consultations regarding distribution, sale, and/or marketing of University-owned copyrightable materials.

Reimbursement of Costs and Royalty Sharing

As a general policy, when Substantial Use of University resources has been provided in support of the production and/or commercialization of a work, 20% of the gross proceeds will be retained by the creator and 80% of the gross proceeds will be returned to the University until the University has been reimbursed for all Substantial Use of University resources provided for producing and marketing the work. Once the University has been reimbursed for Substantial Use expenses, royalties will be divided between the creator and the University as follows:

- a) the first \$10,000 to the creator;
- b) to the creator(s), a total of
 - (i) 60% of the first \$100,000 in gross revenues over \$10,000;
 - (ii) 50% of the gross revenues thereafter.

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- c) to the creator's Department or Unit
 - (i) 20% of the first \$100,000 in gross revenues over \$10,000;
 - (ii) 25% of the gross revenues thereafter.
- d) to the creator's School or College
 - (i) 2.5% of the first \$100,000 in gross revenues over \$10,000;
 - (ii) 5% of the gross revenues thereafter.
- e) to the University's Office of Research a total of
 - (i) 17.5% of the first \$100,000 in gross revenues over \$10,000;
 - (ii) 20% of the gross revenues thereafter.

In the case of a School/College comprising only one department, the revenues assignable to the Department/Unit go to the School/College. In the case of a Department/Unit not reporting to a School/College, the Department/Unit receives the revenues assignable to the School/College.

For purposes of the paragraph above, in the case of joint creators, the direct royalty distribution designated for a creator shall be to the joint creators as a group, to be divided equally between the creators, unless the creators provide the University with an alternative royalty distribution schedule agreed upon by them. If the creators are associated with different units, the royalty distribution to the units shall be to the units jointly to be divided equally, unless the University is provided with an alternative royalty distribution schedule agreed upon by the heads of the respective units and the Provost or his or her designee.

University Nonexclusive License to Use Work for Instructional Purposes

University of Mississippi faculty, staff, postdoctoral fellows and postdoctoral associates and students, as a condition of employment or admission to the University, agree to grant the University a free nonexclusive right to use any work that they create in connection with their employment or matriculation at the University for instructional purposes.

Procedures

Disclosure

Materials are copyrightable at the time the work is created in a fixed form. In the case of supervised works, therefore, ownership vests in the University at that point. It is the responsibility of the University employee who assigned a supervised work to the creator to inform the University of the possible creation of a copyrightable work to which UM has or may have a claim. Disclosure of the creation must be in writing, submitted to the Vice Chancellor for Research with copies to the creator's department chair/unit director and dean/division head, with sufficient detail about the work and its creation to allow determination of ownership.

When Substantial Use of University resources is provided which may lead to the creation of a supported work, it is the responsibility of the department chair or unit director to notify the faculty or staff member, the Dean or Division Head, and the Vice Chancellor for Research in writing that the assistance to be provided may constitute Substantial Use. In cases where the creator is the signatory officer of a department or other unit, he/she must notify his/her immediate superior and the Vice Chancellor for Research. It is then the responsibility of the creator to notify the department chair or unit director, the Dean or Division Head, and the Vice Chancellor for Research when a work is created in fixed form that relies upon Substantial Use of University resources.

Determination of Ownership

Personnel of the Office of Research will acknowledge receipt of the Disclosure of creation of a work, request more information if necessary, examine the work and the Disclosure, and review the work's copyrightability, commercial potential, and UM interest. Within 45 calendar days of receipt of the Disclosure, the Vice Chancellor for Research will make a determination regarding UM's interest in the work and will notify the creator in writing of the determination, with copies to the creator's department chair/unit director and dean/division head. If it is determined that UM has an ownership interest in the copyright of the work but does not wish to pursue its rights, notification to the creator will include the understanding that further development of the work will be at the expense of the creator, on his/her own time, and with no further Substantial Use of University resources.

Release of University Interest in Copyright

If the Office of Research does not wish to register the copyright and pursue commercial exploitation of a work in which it has an ownership interest in the copyright, the employee may obtain a written release from the Chancellor and may then register the copyright in the work entirely in his/her own name. Upon written request for release by the employee, the Office of Research will respond within 45 calendar days.

Appeals

If the creator disagrees with a determination that UM owns or shares an ownership interest in the copyright to the work, the creator may appeal in writing to the Provost, who will refer the issue to the University Copyright Appeals Committee. The appeal must outline

- (a) the circumstances under which the copyrightable materials were created and developed and
- (b) the creator's official duties, as given on his/her contract with UM or as otherwise assigned at the time of the creation of the materials.

Any appeal must be made within 45 calendar days of receipt of the Determination of Ownership. The Committee will make a decision within 45 calendar days of receipt of the appeal. Copies of the appeal and the decision must be provided to the Provost, the Office of Research, the creator's department chair/unit director and dean/division head and the creator.

University Copyright Appeals Committee

The University shall have a standing University Copyright Appeals Committee that shall consider and investigate disputes among administrators, faculty, or staff and shall recommend appropriate solutions to the Provost. The Committee's responsibilities shall include, but not be limited to, disputes concerning:

1. whether Substantial Use of University Resources has occurred;
2. ownership of works which may be supervised, supported or externally sponsored works;
3. distribution of royalties, including determination of the amount of reimbursement to the University in cases of Substantial Use.

Variations from the Policy

From time to time, it may be in the best interests of the creator and the University to enter into an agreement concerning copyright ownership or commercial development of a work that differs from the terms of this policy. In all such cases, the agreement must be in writing and signed by

the creator, the dean or department head, the Vice Chancellor for Research and the Provost. Such agreements should be concluded as soon as practical in the development of the work to protect the interests of both parties and to prevent misunderstandings.

Originality

It is the responsibility of the creator to ensure that copyrightable materials are original and that, where use is made of copyrighted materials owned by others, the rights of copyright owners have been observed. In the case of materials to which the University owns or -shares copyright, UM assumes that the materials as created are original or that use within the work of materials copyrighted by others has constituted "fair use" as it is defined by U.S. Copyright Law, or that the written consent of the copyright owners has been obtained.

Agreement to the UM Copyright Policy

This Policy is binding on the University and on its employees as a condition of their employment at the University. The University may choose to implement formal agreement procedures, but this Policy is valid and applicable when approved by the Chancellor and the Board of Trustees.

Effective Date of Policy

This policy shall become effective upon signing of the next year's employment contracts or the beginning of the next academic year after adoption or approval by the IHL Board.