

ADMINISTRATIVE MEMORANDUM

SUBJECT Copyright policy of the University

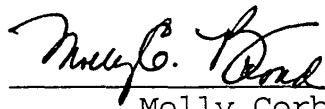
NUMBER 409

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Over the past 18 months a University-wide task force, with the active leadership of the Faculty Assembly, has worked with the Academic Affairs and Legal Affairs divisions of this office to develop a policy framework for the administration of copyright within the University. This has been a collaborative effort, one that included a University-wide colloquium and extensive review of relevant law and copyright policies now in force at other U.S. colleges and universities. The product of that effort is a copyright policy adopted by the Board of Governors on November 10, 2000, to be effective that date. Attached to this memorandum are the Board policy, along with the Board resolution by which the policy was promulgated and a checklist to guide each University institution now to effect the policy. As stated in the Board resolution, this policy rewrites that policy appearing as Section XIII, "Copyrights," at pages V-B-5-6 of The Administrative Manual of The University of North Carolina.

It is expected that in the coming months this office will provide further resources to the institutions to help administer the copyright policy, notably a statute-based primer on copyright ownership and a statute-based primer on copyright use. For the present, issues of copyright may be addressed either to David Edwards, Senior Associate Counsel, or Betsy Bunting, Associate Vice President for Legal Affairs.

At this time you are requested to commence administration of the copyright policy at your institution by addressing the attached "Checklist" with proposed institutional responses. The draft of your institution's responses should be forwarded to the Office of the President for review and approval.



Molly Corbett Broad

Attachment 1-Resolution Concerning Copyright Policy
Attachment 2-Copyright Use and Ownership Policy
Attachment 3-Checklist of Copyright Policy Matters

RESOLUTION CONCERNING COPYRIGHT POLICY

The Board of Governors of The University of North Carolina, in recognition of the evolving importance and substance of copyright in higher education, hereby promulgates the following:

1. The attached "Copyright Use and Ownership Policy of The University of North Carolina" (hereinafter "the Policy") is hereby adopted.
2. The Policy is effective November 10, 2000; provided, that any copyright dispute with respect to a work created prior to this date shall be resolved under such relevant policies and procedures as had existed immediately prior to November 10, 2000, that are not inconsistent with applicable law, unless the parties to the dispute mutually agree in writing to abide by the Policy.
3. Nothing in the Policy is intended to alter the provisions of The Code of the Board of Governors, The University of North Carolina, Chapter VI: *Academic Freedom and Tenure*.
4. The president is hereby authorized to establish such supplemental policies or procedures, not inconsistent with the Policy, as the president may deem necessary or desirable to implement or administer the Policy. This may include provision for review by the Office of the President of policies or procedures intended by University institutions and agencies to implement the Policy.
5. The Policy rewrites Section XII, "Copyrights," at pages V-B-5-6 of The Administrative Manual of The University of North Carolina.

COPYRIGHT USE AND OWNERSHIP POLICY OF THE UNIVERSITY OF NORTH CAROLINA

I. PREAMBLE.

The University of North Carolina, through its constituent institutions, is committed to complying with all applicable laws regarding copyright and patents. The University, as an institution devoted to the creation, discovery, and dissemination of knowledge, supports (1) the responsible, good faith exercise of full fair use rights, as codified in 17 U.S.C. § 107, by faculty, librarians, and staff in furtherance of their teaching, research, and service activities; (2) copyright ownership for creative, non-directed works by faculty, staff, and students and University ownership of directed employment-related works; and (3) protection of ownership rights for creators of works that require a different ownership model.

II. COPYRIGHT USE.

To the foregoing stated ends the University shall:

1. Inform and educate the University community about fair use and the application of the four fair use factors as set forth in 17 U.S.C. § 107 and as interpreted in applicable case law. The four fair use factors are:
 - a. The character and purpose of the proposed use.
 - b. The nature of the work to be used.
 - c. The amount and substantiality of the portion to be used.
 - d. The effect on the market or potential market for the work.
2. Develop and make available resources concerning copyright laws in general and the application of fair use in specific situations.
3. Ensure that faculty, EPA and SPA staff, and students have access to assistance in making fair use determinations.

III. COPYRIGHT OWNERSHIP.

With respect to determining ownership of copyright, the University's policy addresses works by category of copyrightable work (including traditional or non-directed works, directed work, and sponsored or externally contracted works) and by category of author (i.e., faculty, EPA and SPA staff, or student). Ownership of copyrighted subject matter, including software, hinges on which category of work and which category of author pertain to the work at issue. (In this Policy the term "**Institution**" means a constituent institution or component agency of the multi-campus University of North Carolina at which an author or work's creator is employed or enrolled.)

IV. COPYRIGHTABLE WORKS.

A. Works by Faculty and EPA Non-Faculty Employees.

1. *Traditional Works or Non-Directed Works*: A "**traditional work or non-directed work**" is a pedagogical, scholarly, literary, or aesthetic (artistic) work originated by a faculty or other EPA employee resulting from non-directed effort. (Such works may include textbooks, manuscripts, scholarly works, fixed lecture notes, distance learning materials not falling into one of the other categories of this Policy, works of art or design, musical scores, poems, films, videos, audio recordings, or other works of the kind that have historically been deemed in academic communities to be the property of their creator.)

Ownership: Creator of the work, unless it is a directed work, sponsored work requiring University ownership, or a work for hire described in a written agreement between the work's creator and the Institution. (See section B, below, for the definition of "**work for hire**"; under the Copyright Act the Institution is deemed the "**Author**" of a work for hire.) If the Institution is to be involved in commercializing a traditional work or non-directed work, the work's creator shall assign the work to the Institution under an

Assignment Agreement. The Assignment Agreement shall contain provisions outlining the commercialization responsibilities of the Institution and a mechanism for the sharing of commercial proceeds with the Author. In cases of ownership by the creator of a traditional work, the Institution, where practical, shall be granted a non-exclusive, non-transferable, royalty-free license for its own educational or research use (hereinafter referred to as a "**Shop Right**").

2. *Traditional Works or Non-Directed Works Involving Exceptional Use of Institutional Resources:* "**Exceptional use of institutional resources**" means institutional support of traditional works with resources of a degree or nature not routinely made available to faculty or other EPA employees in a given area.

Ownership: Institution. However, upon agreement by the appropriate institutional official or body, the Institution may release or transfer its rights to the work's creator, with the Institution retaining (a) a Shop Right, and/or (b) the right to require reimbursement and/or income sharing from the creator to the Institution if the work produces income for the creator. The parties may also negotiate for joint ownership of such works, with the approval of the appropriate institutional official or body.

3. *Directed Works:* "**Directed works**" include works that are specifically funded or created at the direction of the Institution (including, but not limited to, works for hire by faculty or other EPA employees).

Ownership: Institution. The work's creator, where practical, shall be granted a Shop Right. The Institution may release or transfer its authorship rights to the work's creator under a written agreement negotiated between

the creator and the Institution, usually with the Institution retaining (a) a Shop Right, and/or (b) the right to require reimbursement and/or income sharing from the work's creator to the Institution if the work produces income for the creator. The parties may also negotiate for joint ownership of such works, with the approval of the appropriate institutional official or body.

4. *Sponsored or Externally Contracted Works*: A "**sponsored or externally contracted work**" is any type of copyrighted work developed using funds supplied under a contract, grant, or other arrangement between the Institution and third parties, including sponsored research agreements.

Ownership: For a sponsored or externally contracted work created under an agreement that expressly requires copyright ownership by the Institution, the creator of the work must disclose the work to the Institution. Provided there is no conflict with a sponsored agreement, the Institution may release or transfer its rights to the work's creator under an agreement negotiated between the creator and the Institution, usually with the Institution retaining (a) a Shop Right, and/or (b) the right to require reimbursement and/or income sharing from the work's creator to the Institution if the work produces income for the creator; or the parties may also negotiate for joint ownership of such works, with the approval of the appropriate institutional official or body.

For a sponsored or externally contracted work created under an agreement that does not expressly require copyright ownership by the Institution or a third party, the creator of the work shall own the work, subject to required disclosure to the Institution where required under

institutional policy. In case of ownership by the work's creator, the Institution, if practical, shall be assigned a Shop Right.

B. Works by SPA Staff.

Most works by SPA staff members are considered to be "Works for Hire." A "work made for hire" is:

- a. a work prepared by an employee within the scope of his or her employment; or
- b. a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

Ownership: Works for hire made by SPA staff shall be owned by the Institution. In special cases, though, the Institution may enter into an agreement in advance that the SPA employee shall own the copyright. In addition, a designated institutional official may waive institutional ownership.

C. Works by Independent Contractors.

Works by independent contractors are Works for Hire.

Ownership: Works by independent contractors shall be owned in accordance with the contract under which the work was created. The Institution shall insure that there is a written contract for work by an independent contractor specifying institutional ownership.

D. Works by Students.

"**Student works**" are papers, computer programs, theses, dissertations, artistic and musical works, and other creative works made by students. (For purposes of this Policy, the term "**students**" includes teaching, graduate, and research assistants.)

Ownership: Ownership of the copyright to these works belongs to the student unless the work falls within one of the exceptions described below:

1. *Sponsored or Externally Contracted Works:* Ownership shall be in accordance with the section of this Policy on sponsored or externally contracted works made by faculty or other EPA employees.
2. *Works for Hire:* Student works created by students in the course of their employment with the University shall be considered to fall within the scope of Work for Hire in accordance with the section of this Policy on works for hire made by SPA staff.
3. *Classroom, laboratory, and other academic materials generated by students in the instructional process:* Students have a limited right to use these materials for personal, educational purposes. Students may not use these materials for commercial gain.

As provided by the institutional policy or as agreed to mutually, rights in student works may be transferred between the student and the Institution. In such cases, a written Assignment Agreement shall specify the respective rights and obligations of the parties. The parties may also negotiate for joint ownership of such works, with the approval of the appropriate institutional official or body.

V. WORKS SUBJECT TO PROTECTION BY BOTH COPYRIGHT AND PATENT LAWS.

In cases where an invention or creation is subject to protection under both patent law and copyright law, if the Institution elects to retain title to its patent rights, then the inventor/creator(s) shall assign copyright to the Institution and the Institution shall be compensated in accordance with the royalty provisions of the Institution's patent policy and procedures.

VI. ADMINISTRATION.

The chief executive officer of each Institution shall designate an administrative office, officer, or unit responsible for implementing this policy. The designated institutional administrative entity shall address various matters covered by this Policy, including developing policies and procedures designed to supplement and interpret the ownership aspects of this Policy, providing advice regarding ownership of specific works, releasing institutional rights, and accepting an assignment of rights to the Institution from an author or creator of a work.

VII. DISPUTE RESOLUTION.

The chief executive officer of each Institution shall designate a dispute resolution mechanism (such as a Copyright Committee or Intellectual Property Committee) for resolving any disputes which may arise among an author, other creator of a work, a third-party sponsor of a work, and an institutional official or office concerning copyright ownership or other rights.

Attachment 3

A CHECKLIST OF COPYRIGHT POLICY MATTERS TO BE ADDRESSED THROUGH INSTITUTIONAL PROCEDURES AND RESOURCES

1. Designation by the chief executive officer of the Institution of an institutional office, body, or officer to interpret and administer the Policy (Sec. VI.*), specifically, to include:
 - a. Education of faculty, staff, and students about the law of "fair use" (Sec. I.1.)
 - b. Provision to faculty, staff, and students of resources and guidance in the making of fair use determinations. (Secs. I.2. and I.3.)
 - c. Establishment of a policy concerning portability of "shop rights" beyond the Institution. (Secs. IV.A.1., IV.A.2., IV.A.3., IV.A.4., and IV.C.)
 - d. Definition of "exceptional use of institutional resources" at the Institution. (Sec. IV.A.2.)
 - e. Contracting for the terms of transfer, shared ownership, and/or commercialization of copyrighted works at the Institution. (Secs. IV.A.1., IV.A.2., IV.A.3., IV.A.4., IV.B., and IV.D.)
 - f. Determining the applicability of "work for hire" doctrine and the suitability of waiving that doctrine in individual cases. (Secs. IV.A.1., IV.A.3., IV.B., and IV.D.)
 - g. Specifying a policy to identify those instances in which there shall be disclosure to the Institution by the creator of a sponsored or externally contracted work created under an agreement that does not expressly require copyright ownership by the Institution or a third party. (Sec. IV.B.4.)

2. Establishment by the chief executive officer of a copyright dispute resolution mechanism at the Institution, including the determination whether or not there is to be recourse at the Institution beyond the initial dispute forum, such as to the chief executive officer. (Sec. VII.)

* Parenthetical references are to sections of the "Copyright Use and Ownership Policy of The University of North Carolina," as adopted November 10, 2000, by the Board of Governors.