



OFFICE OF THE PROVOST AND
EXECUTIVE VICE PRESIDENT FOR ACADEMIC AFFAIRS

OFFICE OF THE PRESIDENT
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

September 16, 2019

CHANCELLORS
LABORATORY DIRECTOR MICHAEL WITHERELL
ACADEMIC COUNCIL CHAIR KUM-KUM BHAVNANI
ANR VICE PRESIDENT GLENDA HUMISTON

Re: Systemwide Review of Proposed Revised Presidential Policy on Copyright Ownership

Dear Colleagues:

Attached for Systemwide Review is a proposed draft of the revised Presidential Policy on Copyright Ownership. The current University of California Policy on Copyright Ownership, the principal policy governing ownership of copyrights at UC, has not been updated since 1992. Given the significant copyright landscape changes over the years it has become clear that the time for a policy update is now.

As background, in April 2013, a working group composed of faculty members and other campus representatives who are knowledgeable about copyright law was convened to develop recommendations for improving the policy. Following the working group's submission of its final report in October 2014, the Systemwide Library and Scholarly Information Advisory Committee's (SLASIAC's) Standing Subcommittee on Copyright Policy (SSCP) commenced work on implementing the recommendations of the working group in order to update the policy. In 2016, SSCP finalized and approved its policy revisions; those revisions were subsequently unanimously approved by SLASIAC in late 2016. In April 2017, the draft policy was also reviewed and presented to the Academic Planning Council (APC), a systemwide joint Academic Senate and UC Administration committee that addresses planning issues and considers policies related to the University's academic mission. The policy underwent Management Consultation from October 17 through December 17, 2018.

Key Policy Provisions

In the course of updating the current policy, the SSCP engaged in a detailed review of every provision of the current policy. The proposed modifications to the Presidential Policy on Copyright Ownership reduce areas of ambiguity and streamline the language. Below is a summary of key changes to the 1992 Copyright Ownership Policy, starting with the most substantive changes:

- **Expands eligibility to own copyrights.** The definition of "Academic Authors" in the revised policy expands the pool of those eligible to own copyright. The revised policy's definition is simplified. Among other things, it eliminates references to Academic Personnel Manual titles.

- **Expands and clarifies the pool of works eligible for copyright ownership.** The policy provides a definition of “Scholarly & Aesthetic Works” – a definition that does not exist in the existing policy. It also clarifies that software is a work for which eligible employees may own the copyright.
- **Creates a definition for “Significant University Resources” as a limitation on the University’s ownership.** The current policy has a broad definition of “University Resources,” which directs, in some instances, that the University asserts copyright ownership when the University’s resources contributed to the development of the copyright work. The revised policy now includes a key limitation such that the level of University resources must be “significant” and beyond the support provided to similarly-situated authors.
- **Clarifies graduate student copyright ownership.** The revised policy provides clarity regarding copyright ownership by graduate students of their theses, dissertations, and other copyrightable works. This provision is also incorporated into the draft Open Access for Theses and Dissertations Policy, which has just completed its second systemwide review.
- **Clarifies copyright ownership for represented employees.** The revised policy specifically states that if an inconsistency exists between a union employee’s collective bargaining agreement regarding copyright ownership and the revised policy, the copyright provisions of the union agreement prevail.
- **Expands supplemental references.** The revised policy expands the “Related Information” and “Revision History” sections to reference additional resources and other supplemental information.
- **Deletes numerous unnecessary provisions.** The draft policy is streamlined in that it deletes unnecessary definitions, unnecessarily capitalized terms, legalese, and terms that may be obsolete in several years – among other items.

Frequently Asked Questions

With a view to Systemwide Review, a small working group came together to develop Frequently Asked Questions (FAQs) that would accompany the policy. Given the complexities involved, the Subcommittee felt that developing a set of FAQs could help clarify questions that could arise among the various parties reviewing the policy. Note that while the FAQs are meant to provide guidance and further understanding of the policy, they are not enforceable and by no means replace the policy language itself. The current FAQs are attached.

Management Consultation Review

The revised policy was disseminated for Management Consultation over the course of 60 days, from October 17, 2018 to December 17, 2018. Based on input received, the draft policy has been revised slightly.

Systemwide Review Process

Systemwide Review is a public review distributed to the University leaders requesting that they inform the general University community, affected employees, and unions' membership about policy proposals. Systemwide Review also includes a mandatory full Senate review for at least 90 days.

All employees—faculty, academic appointees, student employees, administrators, and staff—should be afforded the opportunity to review and comment on the draft new policy, available online at: <http://www.ucop.edu/academic-personnel-programs/academic-personnel-policy/policies-under-review/index.html>. Note that Academic Affairs staff will ensure that graduate students and graduate student bodies have an opportunity to review the proposed policy.

Review materials include Frequently Asked Questions (FAQs) which will accompany the policy once finalized.

Attached as well is a Model Communication that may be used to inform non-exclusively represented employees affected by these proposals. Our colleagues in UCOP Labor Relations will inform the collective bargaining units by way of their usual processes.

Please submit comments and feedback to the enclosed policy by December 15, 2019 to ADV-VPCARLSON-SA@ucop.edu (email address is not case-sensitive). If you have any questions, please contact Katie Fortney, California Digital Library, at (510) 987-9371.

Sincerely,



Michael T. Brown, Ph.D.

Provost and

Executive Vice President for Academic Affairs

Attachments

cc: President Napolitano
Executive Vice Chancellors/Provosts
President's Advisory Group
Chief Operating Officer and Chief of Staff Nava
Acting Vice President Lloyd
Vice Provost and Interim Vice President Gullatt
Vice Provost Carlson
Deputy General Counsel Woodall
Associate Vice Provost and Executive Director Waibel
CoUL Chair Cowell
LAUC President Smedberg
Vice Chancellors for Research
Vice Provosts for Academic Affairs/Academic Personnel
Graduate Deans
Academic Personnel Directors
Executive Director Baxter

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Executive Director Chester
Executive Director Peterson

Director Grant

Director Hairston

Director Lee

Director Osorio-O'Dea

Manager Crosson

Manager Jordan

Manager Smith

Copyright Policy and Education Officer Fortney

FAQs for Copyright Ownership Policy

Why is the Copyright Ownership Policy being revised?

UC's Copyright Ownership Policy has not been updated since 1992 and has been due for a revision for some time. There have been repeated areas of concern and confusion over the years, including the copyright status of non-patented software created by faculty as well as some of the key definitions. Among other items, the definition of who is eligible to claim copyright ownership has been expanded (see "Academic Authors" definition in Section II).

What kind of works are eligible for copyright ownership?

Copyright protection is automatic for any "original work of authorship" created by a university author and "fixed in any tangible medium of expression." Examples include journal articles, scholarly papers, textbooks, other books, short stories, poems, case examples, course materials, lecture notes, musical compositions/arrangements and recording, lyrics, architectural drawings, software, visual works of art, sculptures, and other artistic creations, among others, regardless of the medium. Copyright does not protect facts or ideas. To learn more about copyright generally, visit the UC Copyright website at <http://copyright.universityofcalifornia.edu/>.

What is a Scholarly & Aesthetic Work?

As defined in the policy, "Scholarly & Aesthetic Work" is a work authored by certain UC employees within the scope of their employment and in connection with their teaching, research, or scholarship. This can include works such as: journal articles, scholarly papers and books, poems, films, course syllabi, computer software, and other similar works. "Scholarly & Aesthetic Works" generally do not include documents created by non-academic UC staff employees in the course and scope of their employment.

Who owns a Scholarly & Aesthetic Work?

Under U.S. copyright law, your employer normally owns the copyrights in works created within the scope of your employment. However, in recognition of an academic tradition and the nature of Scholarly & Aesthetic Works, under this policy, UC transfers any ownership interest it has in those copyrights back to their individual authors, except under certain circumstances (see next FAQ).

When does UC keep copyright in Scholarly & Aesthetic Works?

UC generally retains copyright in a Scholarly & Aesthetic Work if: (1) the work is sponsored by a third party funder; (2) it would be a breach of either policy, law, or contract to transfer the copyright back to the author; or (3) UC provided significant financial support for the work (see Section III.A.1 of the policy as well as the FAQs on Significant University Resources below).

Are all UC employees considered Academic Authors?

No. As defined in this policy, “Academic Authors” is a narrower term than “Employees.” To be considered an Academic Author, a UC employee must have a general obligation to create copyrightable scholarly or aesthetic works as part of that person’s UC employment. See first definition in Section II.A of the policy.

Is software covered under the revised policy?

Yes. Software is expressly identified as an example of a work whose copyright may be transferred to Academic Authors, so long as the other requirements of “Scholarly & Aesthetics Works” category (Section III.A.1) are met. However, even when the copyright is transferred to the Academic Author, UC continues to own the patent rights created in that software, if any. Patent rights in university inventions are governed by the UC Patent Policy and must still be disclosed to the appropriate campus technology transfer office. If there is any inconsistency between the copyright policy and the UC Patent Policy, the terms of the UC Patent Policy govern.

Can I use software that I created for commercial purposes?

The answer depends largely on the ownership status of the copyright in the software as well as the existence (if any) of underlying patent rights in the software. Questions should be addressed to the campus’s intellectual property licensing office where software issues can be disclosed. The appropriate campus licensing offices can assist you in determining: ownership status of the software (or related works); whether UC’s copyright and/or patent ownership policies apply; and whether the software can be made available for commercial purposes.

How do I know whether I have used Significant University Resources when creating my copyrightable work?

Use of University Resources becomes “significant” when the university’s financial or facility resources used to create the copyrightable work are in excess of those resources generally available to similarly situated employees or students.

The following likely will *not* be deemed to constitute “Significant University Resources”:

- Salary or student financial aid
- Campus-wide resources, e.g., libraries, networks and servers, computer labs open to students/faculty
- General amenities, e.g., office, laptop computer, office supplies, basic administrative and IT support

Use of any of the following likely will be deemed to constitute “Significant University Resources”

- Funds administered by, or under the control, responsibility, or authority of, the University
- Unreimbursed use of dedicated equipment and resources not generally open to similarly situated employees or students, as applicable

Is financial aid considered Significant University Resources for purposes of the Copyright Ownership Policy?

No. Under this policy, student financial aid does not fall within the definition of Significant University Resources.

How does this revised Copyright Ownership Policy affect students?

The revised policy clarifies that students, including graduate students, are the copyright owners of their theses, dissertations, and other student-created copyrightable works. (Section III.A.3.) Under specific circumstances, however, copyrightable works created by students are owned by the University. Those circumstances include if the work:

- (1) was created primarily in the course or scope of the student’s UC employment;
- (2) involved the use of Significant University Resources;
- (3) is a Sponsored Work, Contracted Facilities Work, or Commissioned Work (as those terms are defined in the policy); or
- (4) was created under a separate agreement that specifies a different copyright owner.

Are all copyrightable works created in the course of a sponsored research agreement owned by either the sponsor or UC?

No. Only those works that are created in the “direct performance” of a written agreement between UC and a sponsor can be considered a Sponsored Work. (See Section II, definition of “Sponsored Works.”) The revised policy now includes the word “direct” – a limitation intended to provide greater clarity and greater opportunities for Academic Authors to own the copyright in works created in connection with, but not directly in performance of, a sponsored project. For example, while a written report specified as a deliverable of a sponsored project likely would be considered “in direct performance” of a written agreement, copyrightable materials created as a by-product of the report (and not specified as a deliverable of the sponsored research project), such as a scholarly article discussing certain aspects of the report, would likely not be considered in the “direct performance” of a sponsorship agreement.

The revised copyright policy does not change the ownership status of laboratory notebooks “and other original records of the research” deriving from sponsored research agreements. Such “original records of the research” are typically considered owned by the University

pursuant to the Academic Personnel Manual 020 (UC Regulation No. 4). While the creators of such research records may make copies for their own personal use, the original copies of such records should be archived on the relevant campus.

How does this policy interact with contracts and agreements between UC and other parties (e.g., external grant award contracts, agreements with represented employees, etc.)?

If the relevant agreement between UC and a granting agency, bargaining unit, or another third party is inconsistent with this Copyright Ownership Policy, the agreement prevails. For example, if there are any inconsistencies between this policy and an agreement governing copyright ownership by represented union employees, the provisions of the union agreement prevail (see Section III.E).

How does this policy interact with UC’s Open Access policies?

This policy determines copyright ownership, while UC’s Open Access (OA) policies have no bearing on the copyright ownership determination. For example, the [Academic Senate OA policy](#) states: “This policy does not transfer copyright ownership, which remains with Faculty authors under existing University of California policy.” The copyright ownership determination arising out of this Copyright Ownership Policy does, however, have some impact on certain provisions of the OA policies. For example, the [Presidential OA policy](#) for non-Academic Senate employees outlines different procedures for obtaining waivers depending on whether the author owns the copyright in their scholarly articles, as determined by “the 1992 UC Copyright Policy or its successor.” Under the revised Copyright Ownership Policy, more academic authors likely will own the copyright in their scholarly articles, but this policy does not change anything in the OA policies themselves.

For the purposes of copyright ownership, does it matter whether the UC employee was paid, unpaid, or employed only part-time?

For copyright ownership under this policy, it generally does not matter whether the UC employee was unpaid, employed part-time, or on a temporary leave. The term “employees” is broadly defined in Section II of the policy to mean “all individuals employed or appointed by the University *in any capacity regardless of whether they are* (1) faculty, staff, administration, or students, or (2) *employed full-time, part-time, or in a temporary capacity*” (emphasis added). Therefore, so long as other relevant requirements are satisfied, then unpaid or part-time UC employees are eligible to own copyright to works they create.

Who can I ask for help understanding copyright at UC?

For questions about this policy, contact the “Contact” person identified on the first page of the policy. Assistance is also available at individual campus and lab locations. As noted in Section IV (Compliance and Responsibilities), Chancellors, Laboratory Directors, and their delegates can issue guidelines and supplementary local policies. They can also grant

permission to use materials in cases when a copyright is owned by the University. A list of local contacts with authority over copyright matters is available at <http://copyright.universityofcalifornia.edu/resources/permissions.html>. Depending on your question and location, your campus counsel, campus policy office, or other campus-based resources may be able to help.

DRAFT



Copyright Ownership

Responsible Officer:	Provost & EVP - Academic Affairs
Responsible Office:	AP - Academic Personnel & Programs
Issuance Date:	__/__/2019
Effective Date:	__/__/2019
Last Review Date:	08/19/1992
Scope:	This Presidential policy applies to all employees and students of the University of California and at all University of California locations, including the campuses, medical centers, the Office of the President, Lawrence Berkeley National Laboratory, and Agriculture and Natural Resources. This policy is not intended to change or affect the rights provided in the University of California’s policies regarding patent ownership. If an inconsistency exists between the University’s patent and copyright policies over a particular work, the ownership principles of the patent policies prevail.

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Contact:	Katie Fortney
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I. POLICY SUMMARY

This policy establishes a framework for copyright ownership of copyrightable works created at the University of California (“University”). This policy embodies the academic tradition of granting copyright ownership to certain university personnel for their scholarly and aesthetic works, while maintaining consistency with U.S. copyright law – which, as a default, provides copyright ownership to an employer for works prepared by its employees within the scope of their employment.

II. DEFINITIONS

Academic Authors means Employees who have a general obligation to create copyrightable scholarly or aesthetic works.

Contracted Facilities Works means works created (1) by non-University personnel or by University personnel acting outside the course or scope of their employment, (2) through the use of University Facilities, and (3) generally pursuant to a written agreement.

Employees means all individuals employed or appointed by the University in any capacity regardless of whether they are (1) faculty, staff, administration, or students, or (2) employed full-time, part-time, or in a temporary capacity.

Independent Academic Effort means inquiry, investigation, or research carried out to advance knowledge or the arts where the specific choice, content, course, and direction of the effort is determined by the Academic Author without direct assignment or supervision by the University.

Scholarly & Aesthetic Works means works authored by Academic Authors within the scope of their employment as part of or in connection with their teaching, research, or scholarship. Common examples of Scholarly & Aesthetic Works include journal articles, scholarly papers, textbooks, other books, short stories, poems, case examples, course materials, lecture notes, musical compositions/arrangements and recordings, lyrics, architectural drawings, software, visual works of art, sculptures, and other artistic creations, among others, regardless of the medium in which those works are fixed or disseminated.

Significant University Resources means University Resources beyond the usual support provided by the University and generally available to similarly situated Academic Authors or, as applicable, students. For the purposes of this definition, “usual support provided by the University and generally available to similarly-situated Academic Authors” includes customary administrative support, library facilities, office space, personal computers, access to computers and networks, and regular salary.

Sponsor means an organization or agency that provides funding, equipment, or other support for the University to carry out a specified project pursuant to a written agreement. Sponsors include federal, state, local, and other entities as well as private industry entities, educational institutions, and private foundations.

Sponsored Works means works that are created by or through the University in the direct performance of a written agreement between the University and a Sponsor. Sponsored works generally do not include journal articles, lectures, books, or other works created through Independent Academic Effort and based on the findings of the sponsored project, unless the relevant agreement with the Sponsor states otherwise.

University Facilities means buildings, equipment, and other facilities under the control of the University that are designated by the appropriate Chancellors, Laboratory Directors, or Vice Presidents as requiring an advance agreement, from either non-University personnel or University personnel acting outside the scope of their employment, concerning the disposition of any copyrightable works that are created with the use of these facilities.

University Resources: means either (1) University Facilities or (2) funds, regardless of source, that are administered by – or under the control, responsibility, or authority – of the University.

III. POLICY TEXT

A. *Copyright Ownership by Category of Works*

1. Scholarly & Aesthetic Works. When the “work made for hire” provision in U.S. copyright law applies, the University owns the copyright for copyrightable works prepared by its employees acting within the scope of their employment. However, given the academic tradition of granting copyright ownership to some academic personnel for certain works, the University hereby transfers the copyrights it may own in Scholarly & Aesthetic Works to Academic Authors who prepared those works using Independent Academic Effort.

Notwithstanding the previous sentence, the University does not transfer the copyrights in Scholarly & Aesthetic Works that: (a) are either Sponsored Works, Commissioned Works (as that term is used Section III.A.5 below), or Contracted Facilities Works; (b) would put the University in violation of, or conflict with, an applicable contract, policy, or law; or (c) were created with Significant University Resources.

2. Personal Works. As between the University and its Employees, copyright ownership of works prepared by Employees outside the course or scope of their University employment and without use of University Resources resides with the Employees, unless a relevant agreement states otherwise. For purposes of this policy, works created through non-University consulting activities may be considered a Personal Work so long as such non-University consulting activities do not interfere with the Employee’s regular University duties, do not use University Resources, and are not prohibited by terms of the University’s employment contract or other applicable agreements or policies.

3. Student Works. As between the University and its students, copyright ownership of works prepared by University students (including graduate students) resides with such students, unless the work: (1) was created primarily in the course or scope of the student’s University employment; (2) involved the use of Significant

University Resources; (3) is a Sponsored Work, Contracted Facilities Work, or Commissioned Work; or (4) was created under a separate agreement that specifies a different copyright owner. For the purposes of this section, a student's financial aid is not considered Significant University Resources. Absent unusual circumstances, copyright ownership of theses or dissertations authored by University students resides with such students.

4. Sponsored Works. Ownership of copyrights to Sponsored Works resides with the University, unless the relevant agreement with the Sponsor states otherwise. For any agreement providing ownership of Sponsored Works other than by the University, the University generally requires a free-of-cost, nonexclusive, worldwide license to such works consistent with the University's missions of teaching, research, and public service.

5. Commissioned Works. When the University commissions the creation of a work, ownership of the copyright to that work generally must reside with the University (absent compelling circumstances) and must be specified in a written agreement. For any agreement providing ownership of such commissioned work by a person or entity other than the University, the University generally requires a free-of-cost, nonexclusive, worldwide license to the commissioned work consistent with the University's missions of teaching, research, and public service.

6. Contracted Facilities Works. Ownership of copyrights to a Contracted Facilities Work generally must be governed by a contract between the University and the user of the University Facility regarding use of the specified University Facility. In the absence of an agreement, the University generally owns the copyright to the Contracted Facilities Works.

7. Institutional Work. Except as otherwise provided in this policy or by written agreement, the University owns all copyrights to works either (1) prepared by its Employees within the course or scope of their employment, or (2) created with the use of Significant University Resources.

B. Copyright Ownership of Jointly Created Works

Copyright ownership of jointly-created works involving University personnel will be determined by assessing the Category of Works and resulting ownership rights pursuant to Section III.A above. The copyright rights among joint copyright owners are governed under U.S. copyright law.

C. Release of University Rights

The University may release its copyright ownership rights to the creators of the works when, as determined by the University: (a) there are no overriding or special obligations to a Sponsor or other third parties; and (b) the best interests of the University would be served by releasing its ownership rights. Such release of ownership rights must be

contingent on an agreement by the creator(s) that no further effort on, or development of, the work will be made using University Resources and that the University is granted a free-of-cost, nonexclusive, worldwide license to the work consistent with the University's missions of teaching, research, and public service.

D. Licensing and Royalties

The University may assign or license its copyrights to others. Royalty or other income received from such transactions may be shared with the creators of such works, as determined by the appropriate Chancellor, Laboratory Director, or Vice President (or their delegates) and/or by local policies. The determination of an appropriate income distribution, if any, back to the creators should take into account each creator's contribution, the University's costs, any provisions imposed by Sponsors or other funding sources, and any other applicable agreements concerning the copyright.

E. Union Employees

If any inconsistency exists between this policy and a union agreement governing copyright ownership by Employees represented by a union, the copyright ownership provisions of such union agreement in effect at the time the work was created prevails.

IV. COMPLIANCE / RESPONSIBILITIES

For copyrightable works under their respective jurisdictions, the University's Chancellors, Laboratory Directors, and Vice Presidents are authorized to do – or to delegate the authority to do – any of the following:

A. Issue guidelines, implementing procedures, and supplementary local policies consistent with this policy – including directives regarding licensing, distribution of royalty income, and other rights related to copyrights;

B. Identify certain projects or University Facilities as having special copyright obligations and issue guidelines, implementing procedures, local policies, or copyright assignments in works created through such projects or University Facilities;

C. Register copyrights, accept copyrights from third parties, and sell, assign, or grant licenses in such copyrights – all of the foregoing in the name of The Regents of the University of California; and

D. Release the University's copyright ownership rights pursuant to Section III.C.

V. PROCEDURES

Academic Authors participating in a sponsored project must have an agreement on file with the appropriate campus office (e.g., sponsored projects office or the industry contracts office) that acknowledges: (1) individual and joint responsibility to create and

deliver Sponsored Works to the Sponsor (as required by the terms of the sponsored project agreement) or to the University when so requested, and (2) that copyright ownership of Sponsored Works will reside with the University, unless reserved to the Sponsor or otherwise provided for in the sponsored project agreement, pursuant to Section III.A.4 above.

VI. RELATED INFORMATION

- University of California policy on “Ownership of Course Materials” (9-25-2003)
- University of California policy on “Copyright and Fair Use” (7-9-2015)
- University of California policy on “Open Access” (10-23-2015)
- Open Access Policy of the University of California’s Academic Senate (7-24-2013)
- University of California’s “Copyright” website, available at <http://copyright.universityofcalifornia.edu/>
- U.S. Copyright Act of 1976 and subsequent amendments, available at 17 U.S.C. § 101 *et seq.*
- University of California policy on “Use of Recordings of Course Presentations” (9-23-2005)

VII. FREQUENTLY ASKED QUESTIONS

Frequently Asked Questions may be accessed at [URL].

VIII. REVISION HISTORY

- April 24, 1961 – The Office of the President issued a systemwide regulation regarding the University policy’s on copyright ownership.
- November 1, 1962 – The Office of the President issued another systemwide regulation concerning “the administration of copyrights obtained in the name of The Regents of the University of California.”
- August 1, 1975 – The original systemwide policy, titled “University Copyright Policy,” was issued.
- August 19, 1992 – The last substantive revision of this policy occurred in 1992 when the previous policy was issued.
- June 1, 2012 – This policy was reformatted into the standard template for systemwide policies.



Copyright Ownership

Responsible Officer:	Vice-Provost & EVP - Academic Planning, Programs & Coordination <u>Affairs</u>
Responsible Office:	AGAA - Academic Planning, Programs & Coordination <u>Personnel and Programs</u>
Issuance Date:	8/19/1992 <u>2019</u>
Effective Date:	8/19/1992 <u>2019</u>
<u>Last Review Date:</u>	<u>08/19/1992</u>
Scope:	<p>This statement sets forth <u>Presidential policy applies to all employees and students of</u> the University's Policy on the Copyright Ownership for works produced at, by, or through the <u>of California and at all</u> University of California, its campuses, and the Department of Energy Laboratories. This Policy applies to University employees, students, and other persons or entities using designated University facilities or acting under contract with the University for commissioned works. This Policy addresses ownership of copyright; it does not address ownership or access to the underlying research results or data, as covered in Academic Personnel Manual Section 020. It is does <u>locations, including the campuses, medical centers, the Office of the President, Lawrence Berkeley National Laboratory, and Agriculture and Natural Resources. This policy is not intended to</u> change or affect obligations under <u>the rights provided in</u> the University of California Patent Policy. If, in any case, the application of the two policies gives rise to a conflict's <u>policies regarding patent ownership. If an inconsistency exists between the University's patent and copyright policies over a particular work,</u> the ownership principles of the Patent Policy shall apply <u>patent policies prevail.</u></p>

Contact:	Joanne Miller
Email:	joanne.miller@ucop.edu
Phone #:	(510) 587-6141

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Contact:	Katie Fortney
Title:	California Digital Library
Email:	Copyright@ucop.edu
Phone #:	(510) 987-9371

I. POLICY SUMMARY

~~The creation of copyrighted works is one of the ways the University fulfills its mission of contributing to the body of knowledge for the public good. The University encourages the creation of original works of authorship and the free expression and exchange of ideas.~~

This ~~Policy is intended to embody the spirit of~~policy establishes a framework for copyright ownership of copyrightable works created at the University of California (“University”). This policy embodies the academic tradition, which provides of granting copyright ownership to ~~faculty~~ certain university personnel for their scholarly and aesthetic ~~copyrighted works, and is otherwise consistent with the United States Copyright Law, which provides the University~~works, while maintaining consistency with U.S. copyright law – which, as a default, provides copyright ownership ~~of its employment-related works. Pursuant to Regents' Standing Order 100.4 (gg), the President has responsibility for all matters relating to intellectual property, including copyrights in which the University is involved to~~an employer for works prepared by its employees within the scope of their employment.

II. DEFINITIONS

~~For purposes of this Policy, the following definitions apply:~~

~~**Academic Authors** means Employees who have a general obligation to create copyrightable scholarly or aesthetic works. Scholarly & Aesthetic Works.~~

~~**Copyright:** Copyright is the intangible property right granted by Federal statute for an original work fixed in a tangible form of expression. Copyright provides the owner with the following exclusive rights in a work: to reproduce, to prepare derivative works, to distribute by sale or otherwise, to perform publicly, and to display publicly.~~

~~**Contracted Facilities Works** means works created (1) by non-University personnel or by University personnel acting outside the course or scope of their employment, (2) through the use of University Facilities, and (3) generally pursuant to a written agreement.~~

~~**Designated Academic Appointees:** Those University employees who have a general obligation to produce scholarly/ aesthetic works. Included are all appointees in the Professor series, In-Residence series, and the Professional Research series. Appointees in other academic titles may also be designated by the appropriate Chancellor or Vice President as having the obligation to produce scholarly/aesthetic works~~

Employees means all individuals employed or appointed by the University in any capacity regardless of whether they are (1) faculty, staff, administration, or students, or (2) employed full-time, part-time, or in a temporary capacity.

~~**Independent Academic Effort:** Inquiry means inquiry, investigation, or research carried out ~~by designated academic appointees~~ to advance knowledge or the arts where the specific choice, content, course, and direction of the effort is determined by the ~~designated academic appointee~~ Academic Author without direct assignment or supervision by the University. ~~The general obligation of designated academic appointees to produce scholarly/aesthetic works is considered independent academic effort.~~~~

~~**License:** A contract in which a copyright owner grants to another permission to exercise one or more of the rights under copyright.~~

~~**Originator (s):** One who produces a work by his or her own intellectual labor. When there is more than one originator, the ownership of each originator's contribution shall be considered separately pursuant to this Policy.~~

~~**Permissible Consulting Activities:** Professional or scholarly services provided by University employees for compensation, which do not interfere with regular University duties, do not utilize University resources, and are not prohibited by terms of the University employment contract or other applicable University agreements or policies.~~

Scholarly & Aesthetic Works means works authored by Academic Authors within the scope of their employment as part of or in connection with their teaching, research, or scholarship. Common examples of Scholarly & Aesthetic Works include journal articles, scholarly papers, textbooks, other books, short stories, poems, case examples, course materials, lecture notes, musical compositions/arrangements and recordings, lyrics, architectural drawings, software, visual works of art, sculptures, and other artistic creations, among others, regardless of the medium in which those works are fixed or disseminated.

~~**Royalties:** A payment made to an owner of a copyright for the privilege of practicing a right under the copyright.~~

Significant University Resources means University Resources beyond the usual support provided by the University and generally available to similarly-situated Academic Authors or, as applicable, students. For the purposes of this definition, "usual support provided by the University and generally available to similarly-situated Academic Authors" includes customary administrative support.

library facilities, office space, personal computers, access to computers and networks, and regular academic year salary.

Sponsor: ~~An~~ means an organization or agency ~~which~~ that provides funding, equipment, or other support for the University to carry out a specified project ~~in research, training, or public service~~ pursuant to a written agreement. Sponsors include ~~Federal, State~~ federal, state, local, and other ~~governmental~~ entities as well as private industry entities, educational institutions, and private foundations.

Sponsored Works means works that are created by or through the University in the direct performance of a written agreement between the University and a Sponsor. Sponsored works generally do not include journal articles, lectures, books, or other works created through Independent Academic Effort and based on the findings of the sponsored project, unless the relevant agreement with the Sponsor states otherwise.

University Facilities: ~~Buildings~~ means buildings, equipment, and other facilities under the control of the University, that are designated by the appropriate ~~Chancellor~~ Chancellors, Laboratory ~~Director~~ Directors, or Vice ~~President~~ Presidents as requiring an advance agreement, from either non-University personnel ~~and~~ or University personnel acting outside the scope of their employment, concerning the disposition of any ~~copyrighted~~ copyrightable works that are ~~originated~~ created with the use of these facilities. ~~Such facilities normally include campus computer centers and normally do not include University libraries. For the purposes of this Policy, the Department of Energy Laboratories are considered to be under the control of the University.~~

University Funds: ~~Funds~~ Resources: means either (1) University Facilities or (2) funds, regardless of source, that are administered by – or under the control, responsibility, or authority – of the University.

~~University Resources: University funds or facilities.~~

III. POLICY TEXT

~~A.~~ A. *Copyright Ownership by Category of ~~Work~~ Works*

1. **Scholarly/~~Aesthetic Work~~ & Aesthetic Works.** When the “work made for hire” provision in U.S. copyright law applies, the University owns the copyright for copyrightable works prepared by its employees acting within the scope of their employment. However, given the academic tradition of granting copyright ownership to some academic personnel for certain works, the University hereby transfers the copyrights it may own in Scholarly & Aesthetic Works to Academic Authors who prepared those works using Independent Academic Effort.

~~A scholarly/aesthetic work is a work originated by a designated academic appointee resulting from independent academic effort.~~

Notwithstanding the previous sentence, the University does not transfer the copyrights in Scholarly & Aesthetic Works that: (a) are either Sponsored Works, Commissioned Works (as that term is used Section III.A.5 below), or Contracted Facilities Works; (b) would put the University in violation of, or conflict with, an applicable contract, policy, or law; or (c) were created with Significant University Resources.

~~Ownership of copyrights to scholarly/aesthetic works shall reside with the designated academic appointee originator, unless they are also sponsored works or contracted facilities works, or unless the designated academic appointee agrees to participate in a project which has special provisions on copyright ownership pursuant to Section V.C. of this Policy.~~

2. Personal ~~Work~~Works. As between the University and its Employees, copyright ownership of works prepared by Employees outside the course or scope of their University employment and without use of University Resources resides with the Employees, unless a relevant agreement states otherwise. For purposes of this policy, works created through non-University consulting activities may be considered a Personal Work so long as such non-University consulting activities do not interfere with the Employee's regular University duties, do not use University Resources, and are not prohibited by terms of the University's employment contract or other applicable agreements or policies.

~~A personal work is a work that is prepared outside the course and scope of University employment (except for permissible non-University consulting activities) without the use of .~~

~~Ownership of copyrights to Personal works shall reside with the originator.~~

3. Student ~~Work~~Works. As between the University and its students, copyright ownership of works prepared by registered students (including registered graduate students) resides with such students, unless the work: (1) was created primarily in the course or scope of the student's University employment; (2) involved the use of Significant University Resources; (3) is a Sponsored Work, Contracted Facilities Work, or Commissioned Work; or (4) was created under a separate agreement that specifies a different copyright owner. For the purposes of this section, a student's financial aid is not considered Significant University Resources. Absent unusual circumstances, copyright ownership of theses or dissertations authored by registered students of the University resides with such students.

~~A student work is a work produced by a registered student without the use of University funds (other than Student Financial Aid), that is produced outside any University employment, and is not a sponsored, contracted facilities, or commissioned work.~~

~~Ownership of copyrights to student works shall reside with the originator.~~

4. Sponsored ~~Work~~Works. Ownership of copyrights to Sponsored Works resides with the University, unless the relevant agreement with the

Sponsor states otherwise. For any agreement providing ownership of Sponsored Works other than by the University, the University generally requires a free-of-cost, nonexclusive, worldwide license to such works consistent with the University's missions of teaching, research, and public service.

~~A sponsored work is a work first produced by or through the University in the performance of a written agreement between the University and a sponsor. Sponsored works generally include interim and final technical reports, software, and other works first created in the performance of a sponsored agreement. Sponsored works do not include journal articles, lectures, books or other copyrighted works created through independent academic effort and based on the findings of the sponsored project, unless the sponsored agreement states otherwise.~~

~~Ownership of copyrights to sponsored works shall be with the University unless the sponsored agreement states otherwise. Any sponsored work agreement which provides for ownership by other than the University generally shall provide the University with a free-of-cost, nonexclusive, world-wide license to use and reproduce the copyrighted work for education and research purposes.~~

5. — ~~Commissioned Work~~

~~A commissioned work is a work produced for University purposes by individuals not employed at the University or by University employees outside their regular University employment.~~

5. **Commissioned Works.** When the University commissions ~~for the production~~creation of a work, ~~title normally shall~~ownership of that work generally must reside with the University. ~~In all cases, copyright ownership shall (absent compelling circumstances) and must~~ be specified in a written agreement. ~~Any such~~ For any agreement ~~which provides for~~providing ownership ~~by of such~~ commissioned work by a person or entity other than the University, ~~generally shall also provide~~ the University ~~with~~generally requires a free-of-cost, nonexclusive, ~~world-wide~~worldwide license to ~~use and reproduce the copyrighted work for education and research purposes~~the commissioned work consistent with the University's missions of teaching, research, and public service.

6. — ~~Contracted Facilities Work~~

~~A contracted facilities work is a work produced by non-University personnel or University personnel acting outside the course and scope of their employment, using designated University facilities pursuant to a written agreement.~~

6. **Contracted Facilities Works.** Ownership of copyrights to ~~contracted facilities work shall be governed by the agreement permitting a~~ Contracted Facilities Work generally must be governed by a contract between the University and the user of the University Facility regarding use of the specified University ~~facilities. Depending on the nature of the facility and the~~

~~nature and extent of the use, the agreement may specify that ownership of resulting copyrights rests with the University, or the University simply may be paid a fee for the use of the facility, or some other arrangement may be appropriate.~~ Facility. In the absence of an agreement, the University generally owns the copyright to the Contracted Facilities Works.

~~7.~~ Institutional Work

7. Institutional Work. Except as otherwise provided in this ~~Policy,~~ the University shall own ~~policy or by written agreement, the University owns~~ all copyrights to works ~~made by University employees in~~ either (1) prepared by its Employees within the course ~~and~~ or scope of their employment ~~and shall own all copyrights to works made,~~ or (2) created with the use of Significant University ~~resources.~~ Resources.

~~8.~~ Work Acquired by Assignment or Will

~~The University may acquire copyrights by assignment or will pursuant to the terms of a written agreement or testament. The terms of such agreements should be consistent with this Policy on Copyright Ownership and other University policies governing such acquisitions.~~

~~B.~~ B. Copyright Ownership of Jointly ~~Originated~~ Created Works

Copyright ownership of jointly ~~originated~~ created works ~~shall~~ involving University personnel will be determined by ~~separately~~ assessing the Category of ~~Work of each originator~~ Works and resulting ownership rights pursuant to Section III.A. above. ~~Rights between joint owners of a copyright shall be determined pursuant to~~ The copyright rights among joint copyright owners are governed under U.S. copyright law.

~~C.~~ C. Release of University Rights

The University may release its copyright ownership rights ~~in copyrighted works~~ to the ~~originator(s)~~ creators of the works when, as determined by the University: (a) there are no overriding or special obligations to a ~~sponsor~~ Sponsor or other third ~~party~~ parties; and (b) the best interests of the University would be ~~so served.~~ by releasing its ownership rights. Such release of ownership rights must be contingent on ~~the~~ an agreement ~~of~~ by the ~~originator~~ creator (s) that no further effort on, or development of, the work will be made using University ~~resources~~ Resources and that the University is granted a free-of-cost, nonexclusive, worldwide license to ~~use and reproduce the work for education and research purposes~~ the work consistent with the University's missions of teaching, research, and public service.

~~D.~~ D. Licensing and Royalties

The University may assign or license its copyrights to others. Royalty or other income received from such transactions may be shared with the

~~originator(s)~~creators of such works, as determined by the appropriate Chancellor, Laboratory Director, or Vice President, ~~taking into account the originator' (or their delegates) and/or by local policies.~~ The determination of an appropriate income distribution, if any, back to the creators should take into account each creator's contribution, the University's costs, any provisions imposed by ~~sponsors~~Sponsors or other funding sources, and any other applicable agreements concerning the copyright.

E. Union Employees

If any inconsistency exists between this policy and a union agreement governing copyright ownership by Employees represented by a union, the copyright ownership provisions of such union agreement in effect at the time the work was created prevails.

IV. COMPLIANCE / RESPONSIBILITIES

For ~~copyrighted~~copyrightable works under their respective jurisdictions, the University's Chancellors, Laboratory Directors, and Vice Presidents are authorized to do – or to delegate the authority to do – any of the following:

~~A.~~A. Issue guidelines, implementing procedures, and supplementary local policies consistent with this ~~Policy. These may include~~policy – including directives regarding ~~licensure, disposition~~licensing, distribution of royalty income, and other rights related to copyrights. ~~Copies of such guidelines, policies and procedures shall be sent to the President;~~

~~B.~~B. Identify ~~campus, Laboratory, and other~~certain projects or University ~~facilities or projects~~Facilities as having special copyright ~~assignment~~ obligations and issue guidelines ~~and~~ implementing procedures ~~regarding assignment of~~ local policies, or copyright assignments in works ~~produced using~~created through such ~~facilities or~~ projects; or University Facilities;

~~C.~~C. Register copyrights, accept copyrights from third parties, and sell, assign, or grant licenses in ~~the name of The Regents for any rights to copyrights; and~~such copyrights – all of the foregoing in the name of The Regents of the University of California; and

~~D.~~D. Release the University's copyright ownership rights ~~to copyrighted works which are in the name of The Regents of the University of California~~ pursuant to Section III.C.

V. PROCEDURES

Copyright Agreement and Notification

~~A.—— Prior to any use of a University facility by non-University personnel or by University personnel outside University employment, a signed agreement shall be required that specifies the disposition of copyrighted works. University employees using University facilities for work outside University employment are responsible for bringing this to the University's attention so that an appropriate agreement for use can be negotiated. (See III.A.6 above.)~~

~~B.—— Designated academic appointees~~Academic Authors participating in a sponsored ~~projects~~project must have an agreement on file with the ~~designated campus official which~~appropriate campus office (e.g., sponsored projects office or the industry contracts office) that acknowledges: (a1) individual and joint responsibility to ~~produce~~create and deliver ~~sponsored works~~Sponsored Works to the ~~sponsor,~~ Sponsor (as required by the terms of the sponsored project agreement, ~~and/~~) or to the University when so requested, and (b2) that copyright ownership of ~~sponsored works~~Sponsored Works will reside with the University, unless reserved to the ~~sponsor~~Sponsor or otherwise provided for in the sponsored project agreement, ~~shall vest in the University.~~ ~~(See~~pursuant to Section III.A.4 above).

~~C.—— Any designated academic appointee, other employee, or student wishing to participate in a specified University project that includes copyright ownership requirements other than provided in Section III. of this Policy must sign an agreement indicating his or her concurrence with that project's special conditions. Chancellors and Vice Presidents shall designate special University projects that shall require such special copyright agreements.~~

VI. RELATED INFORMATION

~~Not applicable.~~

- [University of California policy on "Ownership of Course Materials" \(9-25-2003\)](#)
- [University of California policy on "Copyright and Fair Use" \(7-9-2015\)](#)
- [University of California policy on "Open Access" \(10-23-2015\)](#)
- [University of California's "Copyright" website, available at http://copyright.universityofcalifornia.edu/](http://copyright.universityofcalifornia.edu/)
- [U.S. Copyright Act of 1976 and subsequent amendments, available at 17 U.S.C. § 101 et seq.](#)
- [University of California policy on "Use of Recordings of Course Presentations" \(9-23-2005\)](#)

VII. FREQUENTLY ASKED QUESTIONS

~~Not applicable.~~ [Frequently Asked Questions may be accessed at \[URL\].](#)

VIII. REVISION HISTORY

- [April 24, 1961 – The University Office of the President issued a systemwide regulation stating the University policy's on copyright ownership.](#)
- [November 1, 1962 – The University Office of the President issued another systemwide regulation concerning “the administration of copyrights obtained in the name of The Regents of the University of California.”](#)
- [August 1, 1975 – The original systemwide policy, titled “University Copyright Policy,” was issued.](#)
- [August 19, 1992 – The last substantive revision of this policy occurred in August 1992, when the previous policy was issued.](#)
- [June 1, 2012 – This policy was reformatted into ~~the~~ standard ~~University of California policy~~ template ~~effective June 1, 2012~~.for systemwide policies.](#)