

Copyright Policy

Introduction

“ . . . To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”

US Constitution, Article I, Section 8

Protection of intellectual property in the US through patents and copyrights arises from this single line in the Constitution. It declares the social and economic value of sharing new ideas and writings and, to encourage such sharing, reserves special rights for inventors and authors. The University of South Alabama supports full adherence to federal intellectual property law and recognizes the value of this system in furthering its mission of teaching, research and service.

The creation and dissemination of knowledge through all means of tangible expression advances the professional development of faculty, broadens educational opportunities for students, enhances the University's reputation and resources, and furthers the public good. Tangible expression of works by members of the University community results in copyright protection for those works.

This policy is designed to promote tangible creative expression of works, to preserve academic tradition regarding scholarly works, to provide for equitable distribution of rights, revenues and other benefits arising from copyrights, and to establish guidelines for the management of copyrightable works made by members of the University of South Alabama community.

Scope and Effective Date

1. This policy shall apply to all employees of the University. Each employee shall execute all documents as necessary to secure to the University appropriate ownership in and management of copyrights as established by this policy.
2. This policy shall be effective April 1, 2002 and shall apply to all copyrightable materials created by employees after that date.

Summary of Key Points

- Copyright consists of a bundle of rights which may be owned by one party but can be managed separately so that others have use of and access to a copyrighted work.
- In accord with academic custom, faculty will own and manage the copyright inherent in most traditional academic works (such as books, articles, lecture notes,

class materials) regardless of how those works are tangibly expressed, and whenever possible will grant the University rights to use the work internally.

- The University will own and manage the copyright inherent in any work created using significant resources of the University and will grant the creator certain rights to that work.
- The University will own and manage the copyright inherent in works that are specifically commissioned by a University official, are subject to a grant or contract, are collaborative, or are made in the scope of employment (except for traditional academic works of faculty).
- Written agreements which specify the management of the copyrighted work and protect the interests of each party will be required in advance of the teaching of any on-line course and in certain other circumstances.

Copyright Basics

(US Code, Title 17 B Copyrights; specific sections indicated in parentheses)

- Copyright is a form of intellectual property which protects original works of authorship fixed in any tangible medium of expression which can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device (§102).
- Copyright does not protect facts, such as ideas, concepts, principles, processes, discoveries, etc.; it protects only the specific tangible expression of those facts (§102).
- Copyright gives authors the exclusive right to copy, distribute, display or perform their work, to make derivative works, and to license any of these rights to others (§106).
- Infringement of a copyright occurs when one or more of the exclusive rights reserved for the copyright owner is used without permission (§501).
- Registration of a copyright with the US Copyright Office is not required to establish rights but is necessary to enforce those rights against infringement (§411).
- Copyright protection typically lasts for the life of the author plus 70 years. However, if the work is a Work Made For Hire, copyright protection lasts 95 years from the date of first publication or 120 years from creation, whichever expires first (§302).

- Works eligible for copyright protection include the following (§102):
 - literary works;
 - musical works, including any accompanying words;
 - dramatic works, including any accompanying music;
 - pantomimes and choreographic works;
 - pictorial, graphic, and sculptural works;
 - motion pictures and other audiovisual works;
 - sound recordings; and
 - architectural works.

Fair Use of Copyrighted Materials

1. The limited use of a copyrighted work without permission from the owner may be allowable in some circumstances. This type of use is referred to as Fair Use, and includes use for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research. Fair Use of a copyrighted work exempts that use from charges of infringement.
2. In determining whether the use made of a work in any particular case is a Fair Use, federal law sets forth the guidelines which must be considered (*17 U.S.C. §107*):
 - the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; and
 - the nature of the copyrighted work to be used; and
 - 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 as a whole.
3. Each specific use of a copyrighted work must be evaluated on a case-by-case basis to assess whether that use is subject to the Fair Use exemption from infringement. That evaluation must take into account, at a minimum, all four factors listed above. Fair Use exemptions do not apply in every circumstance. Any questions about Fair Use exemptions should be referred to the University Attorney.

Definitions

As used in this policy, these terms have the following meanings:

1. “University” is defined to mean all units of the University of South Alabama, including schools, colleges, hospitals, clinics, institutes, programs, centers, and any other components not otherwise listed.
2. “Employees” are defined to mean all persons receiving compensation from the University, including but not limited to faculty, staff, administrators, student

employees, whether undergraduate or graduate, post-doctoral fellows, residents and visiting scholars, and all other persons aided by Significant Use of University Resources.

3. “Significant Use of University Resources” is defined to mean any use of University facilities, finances, equipment and/or support services that exceed ordinary or regular use in the daily course of job performance. Significant Use of University Resources does not arise through ordinary or regular use of basic office space, library resources, personal computers or computer networks.
4. “Author” is defined to mean the person(s) who creates an original work expressed in a tangible medium and who owns and controls the exclusive rights inherent in the copyright of that work. In the case of a “Work Made For Hire” or a specially commissioned work, the University is the Author.
5. “Work Made For Hire” is defined to mean (1) a work prepared by an employee within the scope of his/her employment; or (2) 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 sound recording, 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 (*17 U.S.C. §101*). In keeping with academic tradition, the University specifically disclaims any ownership of Regular Academic Works created by faculty in such instances that federal law would otherwise grant ownership of copyright in the work to the University as a Work Made For Hire.
6. “Regular Academic Work” is defined to mean an original work fixed in any form of tangible expression which has educational, scholarly, or artistic intent and purpose and which is developed without Significant Use of University Resources.
7. “Institutional Work” is defined to mean any one or more of the following:
 - University-Assisted Works, created by an Employee with Significant Use of University Resources; or
 - University-Assigned Works, specifically commissioned in writing by a University official; or
 - Collaborative Works, created by multiple simultaneous or sequential Employees in which no discrete creators can be determined; or
 - Sponsored Works, created under a grant, contract or other agreement with an external third party; or
 - Works Made For Hire, as defined in this policy.
8. “Student Work” is defined to mean an original work fixed in any form of tangible expression generated by undergraduate or graduate students in the normal course and scope of their educational activities, including papers, computer programs,

theses, dissertations, artistic, musical or other original works, but specifically excluding class notes. Student Work does not include work done as an Employee of the University, as a Sponsored Work, or with Significant Use of University Resources; all such works shall be considered Institutional Works.

9. "External Use" is defined to mean use by a commercial entity, government agency, nonprofit organization or educational institution other than the University.
10. "Internal Use" is defined to mean use by any Employee or any component of the University for scholarly, instructional or other educational purposes.

Management of Copyrighted Works

1. Copyright in Regular Academic Works shall be owned by the Author. The Author shall, where practical, grant the University a royalty-free, non-exclusive, non-transferable license for Internal Use and shall have the option to assign the Regular Academic Work to the University for External Use. A signed written agreement shall define and govern specific rights transferred by the Author to the University for Internal Use or External Use of the Regular Academic Work. Authors shall create Regular Academic Works in a manner consistent with the University Conflict of Interest and Commitment Policy. Authors shall, where practical, manage the copyright in Regular Academic Works to preserve future rights for nonprofit educational use.
2. Copyright in Institutional Works shall be assigned to and owned by the University.
 - For Institutional Works which are University-Assisted Works, the University shall, by written agreement, grant certain rights to the creator of the work. Such rights may include, but are not limited to, any or all of the following: rights for Internal Use, first refusal to teach, attribution, modification, production of derivative works, revision, transportation to another academic institution in case of job transfer, and sharing of net revenues generated through External Use of the Work.
 - Any revenues generated through External Use of a University-Assisted Work shall first be applied to recover costs directly arising from Significant Use of University Resources in the creation of the Work, and then shall be shared with the creator as follows, on a cumulative basis:

\$0- \$10,000	70% creator 20% creator's School/College 10% University
\$10,001-\$50,000	50% creator 20% creator's School/College 30% University
Over \$50,000	30% creator 20% creator's School/College 50% University

- Distribution of such net revenues to the respective parties shall occur at least once annually. The creator's share of such net revenues is personal income separate from regular University compensation, and he/she shall be responsible for the payment of any taxes due on that income. In any instance, a creator may voluntarily choose to dedicate any or all of his/her share of such net revenues to the department, the school, the college, and/or the University. Such dedication shall be confirmed in writing in advance of the first distribution of such net revenues. In the event that the creator ceases to be an Employee of the University, the share of net income dedicated to the creator shall remain the same as set forth herein, and shall be payable to him/her or to his/her heirs or estate for as long as such net revenue is received by the University.
 - The School/College share of such net revenues shall be allocated to the dean of the creator's School/College to be used for scholarly and educational purposes. The University share of such net revenues shall be used to further its research and educational mission as well as to support and encourage the development of intellectual property.
 - For all Institutional Works other than University-Assisted Works, the University shall, where practical, grant the creators a royalty-free, non-exclusive, non-transferable license for Internal Use. The creators shall not be entitled to any further rights or revenue sharing unless negotiated on a case-by-case basis in advance of the creation of the Institutional Work. Any revenues generated by External Use of such Institutional Works shall be distributed according to the revenue sharing plan above, except that the creator's share in that section shall be allocated entirely to the dean of the School/College of the creator to be used for scholarly and educational purposes.
3. In order to protect the University's copyright in Institutional Works, the following notice should be placed prominently on the Institutional Work:

Copyright 8 [year] University of South Alabama. All Rights Reserved.

The date in this notice should be the year the Institutional Work is first published or made publicly available. The appropriate departmental name and address for further inquiries regarding the work may be listed below the copyright notice.

4. Copyright in Student Works shall be owned by students unless assignment of certain rights to the University is a condition for participation in a course. Students shall, where practical, grant the University a royalty-free, non-exclusive, non-transferable license for Internal Use of Student Works, and shall in every case grant the University the right to make and distribute copies of theses and dissertations to the public. Students duly enrolled in a course may take class notes for personal use but may not take or disseminate such notes for commercial purposes unless the course instructor approves such activity in advance.
5. Computer software and related documentation, integrated circuits, databases or any other works which are not Regular Academic Works of faculty and which may be subject to protection under both copyright and patent laws shall be subject to the University Patent & Invention Policy.
6. ***Ownership of copyright in Sponsored Works shall be governed in accordance with the terms and conditions of the grant or contract under which the Sponsored Work was produced and applicable law or, in the event that such grant or contract is silent as to the ownership of copyright, shall be governed according to this policy.***
7. Ownership of copyright in Institutional Works may be reconveyed from the University to the creator upon written request to the President or his/her designee. Such a request may be granted and such ownership reconveyed at the discretion of the President or his/her designee as long as it does not: (a) limit the University's Internal Use of the Institutional Work, (b) violate any legal or contractual obligations of or to the University, (c) create a conflict of interest for the creator, or (d) otherwise conflict with the University's mission. Written agreements between Authors and/or creators and the University govern the management of copyrights and protect the interests of all parties. Such agreements preferably should be executed in advance of the initiation of a work of any type. Advance written agreements shall be required (a) if there is any question about the classification of the work as a Regular Academic Work or an Institutional Work, (b) when an Author grants rights to the University for Internal Use or External Use of a Regular Academic Work, (c) when Internal Use or External Use of a University-Assisted Work is anticipated, or (d) if a Collaborative Work is planned.
8. In all instances, Employees are expected to comply with all applicable copyright and privacy laws. It is the responsibility of Employees to obtain all permissions and releases necessary for the creation of Regular Academic Works and Institutional Works.

Policy Administration and Implementation

1. The President has delegated the responsibility for administering this policy to the Office of Technology Transfer. The Associate Director of Technology Transfer will implement such procedures and standard written agreements as are necessary to carry out the requirements of this policy and will mediate the negotiation of any special agreements or circumstances which may arise.
2. The University Intellectual Property Policy Committee is appointed by the President to serve as a University resource with respect to matters involving the general subject of intellectual property in patents, inventions and copyright. The Committee shall advise the Director on interpretations and applications of this policy, and shall periodically review this policy and recommend such changes to the President as the Committee deems desirable. The Committee shall hear appeals of decisions regarding whether a work is a Regular Academic Work or an Institutional Work, as well as consider any other special circumstances which may arise as a result of this policy.
3. In cases where the classification of a work as a Regular Academic Work or an Institutional Work is unclear, the Director shall, in consultation with the creator and the creator's respective School/College dean, determine whether a work is to be considered a Regular Academic Work or an Institutional Work. Such determination may be appealed by the creator to the University Intellectual Property Policy Committee, whose decision shall be final.
4. The Director shall decide if and when to register with the U.S. Copyright Office the copyright in any Institutional Work. Authors shall be responsible for the registration with the U.S. Copyright Office of the copyright in any Regular Academic Work. The Director shall investigate allegations of copyright infringement of Institutional Works and recommend appropriate action to the University Attorney. If the University initiates copyright enforcement action, the University shall bear all costs of such action. Any proceeds in excess of such costs shall be shared according to the revenue sharing formula set out above. The University shall assume responsibility for the defense of any action, and the satisfaction of any judgment thereon, alleging violation of personal or property rights in Institutional Works which have been created according to this policy by the University or its Employees. The Author of a Regular Academic Work shall assume responsibility for the defense of any action, and the satisfaction of any judgment thereon, alleging violation of personal or property rights in that Work.
5. The Director will oversee the licensing for External Use of Institutional Works and Regular Academic Works assigned to the University. Any net revenues generated by such licensing shall be distributed as outlined above.