

UNIVERSITY OF SOUTH ALABAMA

COPYRIGHT POLICY

Copyright Use

To the following stated ends the University shall:

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:

- The character and purpose of the proposed use.
- The nature of the work to be used.
- The amount and substantiality of the portion to be used.
- The effect on the market or potential market for the work.

Develop and make available resources concerning copyright laws in general and the application of fair use in specific situations.

Ensure that faculty, exempt employees, staff, and students have access to assistance in making fair use determinations.

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, executive, administrative, managerial, staff, or student). Ownership of copyrighted subject matter, hinges on which category of work and which category of author pertains to the work at issue. (Such works may include textbooks, manuscripts, scholarly works, fixed lecture notes, software, 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.) In this Policy the term "University" means the University of South Alabama or component agency at which an author or work's creator is employed or enrolled.

Copyrightable Works

Works by Faculty and Executive, Administrative and Managerial (EAM) Employees.

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 EAM employee resulting from non-directed effort.

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 University. (See section below, for the definition of "Work for Hire;" under the Copyright Act the University is deemed the "Author" of a work for hire.) If the University is to be involved in commercializing a Traditional Work or Non-directed Work, the work's creator shall assign the work to the University 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 University shall have a non-exclusive, non-transferable, royalty-free license for its own educational or research use (hereinafter referred to as a "Shop Right").

Traditional Works or Non-Directed Works Involving Exceptional Use of University Resources: "Exceptional Use of University Resources" means University support of Traditional Works with resources of a degree or nature not routinely made available to faculty or other EAM employees in a given area.

Ownership: University. However, upon agreement by the appropriate University official or body, the University may release or transfer its rights to the work's creator, with the University retaining (a) a Shop Right, and/or (b) the right to require reimbursement for Direct Costs and/or income sharing from the creator to the University 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 University official or body.

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

Ownership: University. The work's creator shall be granted a Shop Right. The University may release or transfer its authorship rights to the work's creator under a written agreement negotiated between the creator and the University, usually with the University retaining (a) a Shop Right, and/or (b) the right to require reimbursement for Direct Costs and/or income sharing from the work's creator to the University 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 University official or body.

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 University 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 University, the creator of the work must disclose

the work to the University. Provided there is no conflict with a sponsored agreement, the University may release or transfer its rights to the work's creator under an agreement negotiated between the creator and the University, usually with the University retaining (a) a Shop Right, and/or (b) the right to require reimbursement for Direct Costs and/or income sharing from the work's creator to the University 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 University official or body.

For a Sponsored or Externally Contracted Work created under an agreement that does not expressly require copyright ownership by the University or a third party, the creator of the work shall own the work, subject to required disclosure to the University where required under University policy. In case of ownership by the work's creator, the University shall be assigned a Shop Right.

Works by Staff

Most works by staff members are considered to be "Works for Hire." A "Work for Hire" is: a work prepared by an employee within the scope of his or her employment; or a work specially ordered or commissioned for use as a contribution to a collective work, as software products, digital media, course packs, motion pictures, audiovisual works, translations, supplementary works, compilations, instructional texts, tests, answer material for a tests, development of atlases, if the parties expressly agree in a written instrument signed by them that the work shall be considered a Work for Hire.

Ownership: Works for Hire made by staff shall be owned by the University. In special cases, though, the University may enter into an agreement in advance that the staff employee shall own the copyright. In addition, the Vice President for Research may waive University ownership.

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 University shall insure that there is a written contract for work by an independent contractor specifying the University as the owner and creator.

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:

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 exempt employees.

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 Work for Hire made by staff.

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 University policy or as agreed to mutually, rights in student works may be transferred between the student and the University. 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 University official or body.

Responsibilities of Creators

In order to ensure that a proper determination of ownership is made, creators will promptly disclose to the University all copyrightable works in which the University may claim or assert rights under this Policy. Part of the disclosure by creators shall include a disclosure of the circumstances under which the work was created, a description of any University resources that were used, and any financial or other relationship with a third party that might affect the University's rights in the work. If the creator is uncertain whether the University would claim copyright ownership in a work, the work should be disclosed. Disclosures must be made in writing to the creator's department head. The department head will forward the disclosure to the Office of Technology Transfer (see the Disclosure Form for Copyright).

Copyright protection does not extend to ideas, procedures, processes, or useful articles. While ideas are not copyrightable, the original manner in which those ideas are expressed is.

Shop Rights

Whenever a Shop Right is offered/granted from one party to another for a copyrighted Work, the recipient will receive a non-exclusive, world-wide, royalty-free, perpetual and irrevocable right and license to copy, distribute, display, and perform this Work, in whole or in part, and to incorporate the Work, in whole or in part, into other works (the "Derivative Works") in his/her/University teaching and research activities including publication of the subsequent work in both printed and electronic materials and on the recipients non-profit educational Web site.

Copyright Revenue Sharing Formula

Introduction

The University of South Alabama encourages innovation by its faculty, staff and students. When those innovations in the form of copyrights owned by faculty, exempt employees, and students that are assigned to the University and are licensed and generate income for the university, that income is shared with those who made the innovation according to the following guidance.

Revenue Sharing Formula and Regulations

“Gross Revenue” means all income actually received by the University as consideration for the licensing, optioning, or other transfer of rights to copyrights that are subject to the University's Copyright Policy, less any amount required to be paid to the University as “Direct Costs” that include the cost of production, financial support for creation of the work, sales, advertising, distribution, licensing, costs of obtaining patents, copyrights, stipends, release time, deductions to another entity pursuant to a sponsored research agreement, inter-institutional agreement or other legally binding agreement. Gross Revenue includes, but is not limited to, option fees, royalties, license issue fees (whether cash or equity when liquidated), and milestone payments.

Any income from licensing activity that is received in the form of support (in cash or in kind or otherwise) for research or any other form of sponsored research is not part of the Gross Revenue.

Gross Revenue (minus the Direct Costs) shall be distributed as follows:

- 70% to the Creator/s
- 5% to the College
- 5% to the Department/Unit
- 15% to the Patent Trust Fund
- 5% to the Vice President for Academic/Health Affairs

Where there are two or more co-inventors associated with an invention, the applicable percentage of Gross Revenue is divided equally among all co-creators, unless all co-creators, prior to the distribution of shared revenue, establish in writing a signed agreement by which all creators agree to an alternative share of royalties.

In the event that a creator declines or is unable for any reason to accept the creator's share of a royalty distribution, that share shall be distributed equally among any other creators. In the event of a creator's death, royalty payments will continue to be provided to the estate.

Distributions of gross revenues received by the University to its inventors will occur within 60 days of receipt.