

THE UNIVERSITY OF SCRANTON COPYRIGHT POLICY

I. OBJECTIVES

The University encourages the creation of copyrightable creative works by members of the University community. This policy is intended to provide an incentive for creative intellectual effort; to protect and promote academic freedom; to assist creators and the University to realize tangible benefits from creative works; to balance the equitable rights of faculty and other employees, students, sponsors, and the University; and to ensure the advance of knowledge and the dissemination of creative works for the public benefit.

II. COPYRIGHT POLICY

A. Definitions

1. Copyrightable Materials

Under federal copyright law, copyright protection subsists in Aoriginal works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.@ 17 U.S.C. ' 102. Copyright exists from the moment of creation of the work. Copyright protects the expression of an idea, but not an idea itself. Works of authorship include the following categories:

- a. literary works, such as books, journal articles, text books, laboratory manuals, lectures, computer programs, monographs, glossaries, bibliographies, study guides, syllabi, work papers, unpublished scripts, lectures, and programmed instruction materials;
- b. musical works, including any accompanying words;
- c. dramatic works, including any accompanying music, live video and audio broadcasts;
- d. pantomimes and choreographic works;
- e. pictorial, graphic, and sculptural works, including works of fine, graphic, and applied art, photographs, prints, slides, charts, transparencies and other visual aids;
- f. motion pictures and other audiovisual works, such as films, videotapes, videodiscs and multimedia works;
- g. sound recordings, such as audiotapes, audio cassettes, phonorecords and compact discs; and
- h. architectural works.

2. Exclusive Rights

Subject to certain limitations contained in the Copyright Act, the owner of a copyright has the exclusive right to do the following:

- a. to reproduce copies of the copyrighted works;
- b. to make derivative works based on the copyrighted works;
- c. to distribute copies of the copyrighted works to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- d. to perform the copyrighted works publicly; and
- e. to display the copyrighted work publicly. 17 U.S.C. ' 106.

3. Employee and Faculty

The term Aemployee@ shall mean any person receiving regular compensation from the University in exchange for specified services. University employees include faculty, staff and administrators, whether full- or part-time. University employees do not include independent contractors or those persons whose primary connection to the University is that of student. Full-time faculty are those persons who hold full-time faculty contracts and who have been appointed to a faculty rank.

4. Sponsored Research and Sponsored Projects

The terms Asponsored research@ and Asponsored project@ refer to research activities or other works performed by a University employee for compensation from any agency, organization or person external to the University, which research activity or other work may result in the creation of copyrightable works.

5. Substantial Use of University Resources

ASubstantial use@ includes projects undertaken by the faculty member with the benefit of extraordinary funds, facilities, or opportunities which the faculty member would not ordinarily be entitled to have for any chosen project. Ordinarily available resources include office space and personal office equipment, office computer workstations, library and other information resources, and the means of network access to such resources, including information available on University servers and the Internet, funding, and ordinarily available audio and video resources.

6. Royalties

It should be noted that tuition income does not constitute royalty income. The definition of net royalties shall be determined by agreement between the faculty author(s) and the University and incorporated into the specific written agreement as referenced in

paragraphs II.D.1. and II.D.2.

B. Ownership

1. Works Created by Other Than Full-time Faculty

Under copyright law, copyright to a work created by a person in the course of his or her employment belongs to the employer rather than to the individual creator. For all University employees other than full-time faculty, this work-for-hire rule applies. In other words, the University owns the copyright in works created by other than full-time faculty in the course of their employment.

2. Works Created by Full-time Faculty

Traditionally, faculty members at many colleges and universities are deemed to own the copyright in books, articles, instructional materials, and other scholarly writings. In recognition of this traditional practice, and specifically in support of faculty freedom to teach, write and publish as they wish, the University affirms that copyrightable works created, made, or originated by a full-time faculty member shall be the sole and exclusive property of the faculty author¹ except when he or she voluntarily chooses to transfer such property in full or in part, or as described in the following cases:

- a. special projects B The University will own the copyright in works created by faculty members as part of a project the nature of which lies outside the normal academic or administrative duties of a faculty member as specified in Section 5.4 of the Faculty Handbook and where the faculty members enter voluntarily into a written agreement that such works will be owned by the University.
- b. sponsored research or sponsored project B Where copyrighted materials are created by an investigator in the course of sponsored research funded by an outside agency, copyright ownership will be determined by the applicable terms of the funding agreement.
- c. patentable works B Where a copyrighted work, such as certain computer software, is also patentable, the University Patent Policy will apply, notwithstanding any inconsistent provisions of this policy.
- d. substantial use of University resources B Substantial use projects shall be identified as such early in the development stage and a written agreement shall be executed

¹ In the case of syllabi, the responsibility to submit current copies to the department and distribute them to students as specified in Section 5.4 of the Faculty Handbook, and their use by the University for program review and accreditation purposes, is unaffected by the ownership thereof.

between the faculty member and the University. The faculty member and the University shall jointly own such works.

3. Works Created by Students

As a general rule, copyrightable works created by students are owned by them. Exceptions to the rule include creation of the work as part of assigned work for which the student is paid, creation of the work as part of sponsored research, or creation of the work involving substantial use of University resources as defined in this policy.

C. Administration of Copyrightable Works

1. Faculty Works Not Work-for-Hire

For those works of which faculty members own the copyright, the faculty members are free to register the copyright and are wholly responsible for protecting the works from infringement.

2. Institutional Works or AWorks-for-Hire@

For those works of which the University owns the copyright, whether because the works were created by an employee other than a full-time faculty member, or were developed by a full-time faculty member under a special project, the creator shall disclose the creative works to the University as soon as possible after creation. The Dean of the Graduate School/Director of Research, assisted by the Director of Research Services and the General Counsel, will register the copyright if appropriate and protect the work from infringement if necessary.

3. Jointly Owned Works

For those works which are jointly owned by the University and one or more full-time faculty members, the University will register the copyright, if appropriate, and will protect the work from infringement if necessary.

4. Works Created as Sponsored Research or Sponsored Projects

For those works created as a result of sponsored research or sponsored projects, administration of the works will be determined by the terms of the sponsorship agreement.

5. Student-Created Works

Ordinarily students= works will be considered their own and will be self-administered

similarly to faculty works as described in paragraph II.C.1. above. If the student works are created with substantial use of University resources or as assigned work for which the student is paid, the work will be administered as work-for-hire as described in paragraph

II.C.2. above. Any copyrightable works resulting from student participation in faculty projects will be owned by the faculty, although it is assumed that such student participation will be credited.

D. Distribution of Income

1. Faculty-Created Works Owned by University

For those faculty-created works assigned to, or initially owned by, the University, the creator will receive fifty percent of the net royalties which accrue to the University. The University portion of such net royalties will be administered by the Dean of the Graduate School/Director of Research. One-half of such royalties will be given to the University department of the creator of the work. Generally, the other half of the University's share of royalties will be used to stimulate further research, if the royalties result from research; royalties resulting from course-related works will be used to fund further course development. The University reserves the right, at its discretion, to deduct from the University's share of royalty income, prior to any such distribution, expenses properly attributable to the development or protection of the material, including litigation, which may be incurred in enforcing or defending the copyright or in licensing the copyrightable material.

2. Faculty-Created Works Jointly Owned with University

For those works which are jointly owned by the University and one full-time faculty member, fifty percent of the net royalties will be attributed to the University share and divided as described in paragraph II.D1. The other fifty percent will go in its entirety to the faculty member. For those joint works with two or more faculty authors, net royalties will be divided in equal shares among the joint owners, with the University share divided as described in paragraph II.D.1. and the faculty shares payable directly to them.

3. Works Created as Sponsored Research or Sponsored Projects

Income from works created as sponsored research shall be disposed of in accordance with the terms of the underlying contract or grant. In the absence of such terms, the works created shall be the property of the University, and net royalties received by the University will be distributed as described in paragraph II.D.1.

E. Dispute Resolution

1. Disputes Initiated by a Full-Time Faculty Creator

Disputes concerning application of this policy when a faculty creator is involved shall be resolved by a review panel of three members: the creator or a representative of the faculty creator of the work, a person designated by the Provost/Academic Vice President, and a person mutually agreed to by the faculty creator and the Provost/Academic Vice President. All panel members shall be non-attorney, full-time University employees.²

Within fourteen days after the faculty creator disputes the application of this policy to the Dean of the Graduate School/Director of Research, the panel shall be formed and convened and shall render its decision by a majority vote. The decision of the panel may be appealed by the faculty creator to the Provost/Academic Vice President.

This dispute resolution procedure is not intended to and does not supersede any grievance or other procedure contained in the Faculty Handbook. If a dispute is not resolved under this procedure to the satisfaction of the faculty member involved, the faculty member may then proceed to use any procedure available in the collective bargaining agreement.

2. Disputes Initiated by a Creator Who is Not a Full-Time Faculty Member

Disputes concerning application of this policy will be resolved by a review panel of three members: the creator or a representative of the creator of the works; a person designated by the Provost/Academic Vice President; and a person designated by the Vice President for Finance/Treasurer. All panel members shall be non-attorney, full-time employees of the University.³

Within fourteen days after the creator disputes the application of this policy to the Dean of the Graduate School/Director of Research, the panel shall be formed and convened and shall render its decision by a majority vote. The decision of the panel may be appealed by the creator to the Provost/Academic Vice President, whose decision is final.

Drafted by joint FAC/FPC Committee

² If the creator is a full-time University employee who is also an attorney, that person can represent himself or herself.

³ See note 2.